

of the Improvements is free from defects or complies with all applicable laws. In the event of a dispute regarding any notice of failure to complete the construction of the Improvements in accordance with the applicable plans and specifications, either party may request in writing a dispute resolution meeting with the City's Project Manager. The meeting will be held within three business days of such a request and the Parties agree that the recommendations of the Project Manager will be given due consideration in the resolution of the dispute. If the Parties are not satisfied with the recommendations of the Project Manager, the matter may be appealed to the Director of the applicable City department with jurisdiction over the Improvements in question and thereafter to mediation, as allowed by this Agreement; and

(d) reimburse Gables for the engineering design and construction costs of the Improvements, in accordance with the provisions of Article V hereof within 30 days after final acceptance.

#### **Section 4.05 City's Right to Construct Improvements on Default of Gables.**

a. Subject to the provisions of the Master Agreement, including, without limitation, those pertaining to lender protection, notice and cure periods, and public health and safety, if Gables begins but does not complete construction of the Improvements materially in accordance with the Plans and Specifications and the terms and provisions in this Agreement, the City has the right, but not the obligation, to complete the construction of the Improvements.

b. If the City elects to complete the Improvements, all plans, designs, easements, real and personal property, and Improvements produced or installed by Gables or its Engineers or Contractors within the City easement prior to the take over of construction of the Improvements by the City, will become the property of the City.

c. Gables grants to the City a nonexclusive right and easement to enter the Property to the most limited extent as may be necessary for the purpose of performing Gables' construction obligations pertaining to the Improvements under this Agreement in accordance with its terms and provision and in accordance with the notice and cure periods contained in this Agreement.

d. If Gables is terminated pursuant to Section 11.01 of the Master Agreement, the City will reimburse Gables for its prorata share of the work performed in accordance with the plans and specifications and the terms of this Agreement to the date of such termination, subject to the receipt of acceptable close-out information, including the contractor's invoice for services rendered to the date of termination.

### **ARTICLE V COSTS AND REIMBURSEMENT**

#### **Section 5.01 Gables' Initial Responsibility for Improvements Costs.**

Gables will initially pay all costs associated with the design and construction of the Improvements in a timely manner as provided in this Article V.

### **Section 5.02 Cost Reimbursement.**

The City will reimburse Gables the portion of the design and construction costs of the Improvements described herein, approved in accordance with this Agreement, as specified in attached Exhibit "E", in accordance with the terms of this Article V, after Gables has constructed and the City has accepted the Improvements described herein for operation and maintenance. The City's participation in the cost of the Improvements may include third party contributions. The City will be responsible for reimbursing Gables for a portion of the costs of such design and construction up to the not to be exceeded amount of Zero Dollars (\$0.00) without amendment to this Agreement or other authorization by the Austin City Manager.

### **Section 5.03 Report of the Project Costs Required.**

a. On or before the date of final acceptance of the Improvements, Gables will submit a report to the City of the total costs of the Improvements that includes reasonable supporting information. Gables agrees to provide all information and documents in its possession or immediate control reasonably required by the City for proper processing and for accurate accounting and documentation of actual Project costs.

b. The City will verify and determine the final total cost amount and will certify the amount due to Gables for the Project. If the City determines that the amount due to Gables is the same as the amount submitted by Gables, the City will have 30 days after receipt of all supporting information or the date of final acceptance of the Project, (whichever is later), in which to make the payment to Gables. If the City determines that the amount owing to Gables is less than the amount submitted by Gables, the City will: (i) notify Gables of the discrepancy within twenty days of Gables' submittal to the City; (ii) provide Gables with all supporting documentation upon which the discrepancy is based; and (iii) work diligently and in good faith to resolve the discrepancy within the ensuing ten days. If the Parties are unable to resolve the discrepancy, either Party may refer the matter to mediation in accordance with Article VII.

c. If Gables allows work to commence on a change order that effects a material change of the Plans and Specifications for any approved phase before receiving the approval of the applicable City department(s) for the change order, any additional costs incurred on that change order may not be eligible for reimbursement, if the City reasonably determines that the change in the Project is materially unacceptable.

d. In any event, subject to the applicable not to be exceeded amount and notwithstanding anything to the contrary contained herein, the City will reimburse Gables the amounts not in dispute then owing to Gables.

## **ARTICLE VI CONSTRUCTION**

### **Section 6.01 Conditions for City Maintenance of the Improvements.**

After the City's final acceptance of the Improvements, the City will have an easement in and maintain the Improvements, subject to the Contractor's one-year warranty and provisions of 6.02 below, except that Gables expressly shall have certain ordinary and ongoing maintenance responsibilities for any portions of the Improvements described to be the maintenance responsibility of Gables in the Master License Agreement.

#### **Section 6.02 Warranty.**

a. Upon Substantial Completion of the Improvements and as a condition precedent to final acceptance by the City, Gables will transfer to the City all warranties for the Improvements, including the Contractor's one year warranty and any warranty bond and any other warranty or rights Gables has in connection with the Plans and Specifications as they relate to the Improvements, excluding any portion of such warranty pertaining to Gables' Project. Except as may otherwise be specifically provided in this Agreement or any other Agreement, Gables in no way guarantees either the performance or quality of the work undertaken or materials used by any contractor or subcontractor undertaking construction pursuant to this Agreement or any Other Agreement, and **GABLES HEREBY DISCLAIMS ANY AND EVERY WARRANTY OR GUARANTY OF PERFORMANCE, QUALITY, SUITABILITY FOR ANY AND EVERY PARTICULAR PURPOSE WHATSOEVER, AND THE CITY HEREBY ACKNOWLEDGES AND ACCEPTS SUCH DISCLAIMER.**

b. Gables will be responsible for any material damage (ordinary wear and tear excepted) to the Improvements accepted by the City for operation and maintenance for one year following acceptance by the City, but only to the extent that the damage was caused directly by Gables or its Contractor during construction of the Improvements or Project.

#### **Section 6.03 No Liens Permitted.**

Gables will make timely payment for all aspects of properly performed engineering, design, construction work (including inspection fees), and for all materials and services relating to the Improvements in accordance with the applicable Construction Contract(s) and design services contracts for the Improvements. Gables will not suffer or permit the filing, perfection, or execution of any lien or encumbrance on the Improvements, and will cause any such lien to be released of record by payment, deposit, bond, or order of court of competent jurisdiction. Gables will have the right to contest any claim asserted in connection with the design and construction of the Improvements described herein, including the right to contest such claim in any court of competent jurisdiction. Gables shall secure the release within ninety days of the recordation of any lien or encumbrance. The foregoing notwithstanding any lien disputed by Gables may be bonded, as applicable, by the payment and performance bonds provided by the Contractor for the Improvements or otherwise bonded or secured by other fiscal, including a letter of credit, acceptable to the City Law Department within sixty days of its recordation.

**Section 6.04 Agreement May be Pledged as Collateral.**

Gables may pledge this Agreement as collateral for the purpose of securing financing from one or more lenders for the Improvements. Gables or its lender will provide documentation of the use of this Agreement as collateral to the City Law Department for its review and approval, which approval will not be unreasonably withheld or delayed.

**ARTICLE VII  
GENERAL PROVISIONS**

**Section 7.01 Interpretation of this Agreement, and Entire Agreement.**

The Parties agree that in the event of any conflict between provisions of this Agreement and of the Master Agreement, the provisions of this Agreement shall control, provided, however, that notwithstanding the foregoing, (i) the General Provisions of Article XI of the Master Agreement shall apply to and control this Agreement, as if more fully set forth herein, and (ii) the mortgagee protection provisions of the Master Agreement (Article X thereof) shall apply to and control this Agreement. Subject to the foregoing, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against either Party.

**Section 7.02 No Waiver.**

No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or any covenant by the City, the Gables, or their successors or assigns, whether the violations are known or not, shall not constitute a waiver or estoppel of the right to do so.

**Section 7.03 Governmental Authority.**

Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the operation and maintenance of the Improvements constructed under the terms of this Agreement which are to be operated and maintained by the City, except as specifically waived or modified herein or by specific action of the City Council, nor its duty to provide for the public health, safety, and welfare in the operation and maintenance of the same.

**Section 7.04 Expiration of Reimbursement.**

The reimbursement described herein shall be available to Gables until the completion of construction of all of the Improvements, but not longer than ten (10) years from the date of this Agreement, which time period is subject to extension by mutual agreement.

**This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.**

**SIGNATURE PAGES FOLLOW.**

Executed to be effective on \_\_\_\_\_, 2005.

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
\_\_\_\_\_  
Assistant City Attorney

**CITY OF AUSTIN:**

By: \_\_\_\_\_  
Toby Hammett Futrell  
City Manager

**APPROVED AS TO CONTENT:**

By: \_\_\_\_\_  
Sue Edwards, Director  
Economic Growth and Redevelopment Services

By: \_\_\_\_\_  
Austan Librach,  
Economic Growth and Redevelopment Services

STATE OF TEXAS       §  
                                  §

COUNTY OF TRAVIS    §

**THIS INSTRUMENT** was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2005, by Toby Hammett Futrell, as City Manager of the City of Austin, a Texas municipal corporation, on behalf of said municipal corporation.  
(SEAL)

\_\_\_\_\_  
Printed/Typed Name of Notary  
My Commission Expires: \_\_\_\_\_

**LION GABLES REALTY LIMITED  
PARTNERSHIP, a Delaware limited  
partnership**

By: Gables GP, Inc.  
a Texas corporation,  
its sole general partner

By: \_\_\_\_\_  
Ben Pisklak, Vice-President

STATE OF TEXAS           §  
                                  §  
COUNTY OF TRAVIS      §

THIS INSTRUMENT was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Ben Pisklak, Vice-President, of Gables GP, Inc., a Texas corporation, general partner of Lion Gables Realty Limited Partnership, a Delaware limited partnership, of said corporation and partnership.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name of Notary  
My Commission Expires: \_\_\_\_\_

Exhibit "A": Legal Description of Property  
Exhibit "B": The Project-  
Exhibit "C": Improvements  
Exhibit "D": Insurance and Bond Requirements  
Exhibit "E": Cost Participation

EXHIBIT 'A'

2.582 ACRE  
LUMBERMEN'S INVESTMENT  
CORPORATION

FN 04-272(MM)  
JULY 30, 2004  
BPI JOB NO. 1159-01.92

DESCRIPTION

OF 2.582 ACRES OF LAND SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, OUT OF OUTLOT 11, DIVISION 2 OF THE ORIGINAL CITY OF AUSTIN, BEING A PORTION OF THAT CERTAIN 3.19 ACRE TRACT CONVEYED TO LUMBERMEN'S INVESTMENT CORPORATION BY DEED OF RECORD IN VOLUME 12038, PAGE 535 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 2.582 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron rod found at the southeasterly corner of that certain 1.94 acre tract being Lot A, Jetco Partners International Resubdivision One, a subdivision of record in Book 83, Page 184A of the Plat Records of Travis County, Texas, same being the southwesterly corner of said 3.19 acre tract, also being in the agreed upon Boundary line between Lumbermen's Investment Corporation and the City of Austin of record in Document No. 2001013549 of the Official Public Records of Travis County, Texas for the southwesterly corner hereof;

THENCE, leaving said Boundary Line Agreement of record, along the common line of said 3.19 acre tract and said Lot A, Jetco Partners International Resubdivision One, the following four (4) courses and distances:

- 1) N26°28'47"E, a distance of 222.40 feet to a 1/2 inch iron rod found;
- 2) N65°11'45"W, a distance of 53.96 feet to a 1/2 inch iron rod found;
- 3) N36°00'59"E, a distance of 153.54 feet to a 1/2 inch iron rod found;
- 4) N31°18'32"E, a distance of 22.34 feet to a 1/2 inch iron rod found, being the northeasterly corner of said Lot A, Jetco Partners International Resubdivision One, same being in the westerly line of Missouri Pacific Railroad Right-of Way;

THENCE, N31°37'22"E, a distance of 6.92 feet to a 1/2 inch iron rod found at the northwesterly corner of said 3.19 acre tract, being in the westerly line of the Missouri Pacific Railroad Right-of-Way (R.O.W. Varies) and the northwesterly corner hereof, being the point of curvature of a non-tangent curve to the right;



EXHIBIT 'A'

FN NO. 04-272(MM)  
JULY 30, 2004  
PAGE 2 OF 2

THENCE, along said non-tangent curve to the right, along a portion of the northerly line of said 3.19 acre tract, being a portion of the westerly line of the Missouri Pacific Railroad Right-of-Way, having a radius of 520.00 feet, a central angle of  $57^{\circ}48'02''$ , an arc length of 524.58 feet and a chord which bears  $S25^{\circ}50'12''E$ , a distance of 502.62 feet to a PK nail set in concrete for the northeasterly corner hereof;


THENCE, leaving the westerly line of Missouri Pacific Railroad right-of-way, over and across said 3.19 acre tract the following two (2) courses and distances;

- 1)  $S20^{\circ}22'13''W$ , a distance of 45.27 feet to a cotton spindle set for the southeasterly corner hereof;
- 2)  $N74^{\circ}57'47''W$ , a distance of 321.98 feet to a calculated point in the southerly line of said 3.19 acre tract, same being the aforementioned Boundary Line Agreement of record;

THENCE,  $N49^{\circ}56'23''W$ , along said Boundary Line Agreement of record, being the southerly line hereof, a distance of 62.77 feet to the POINT OF BEGINNING, containing an area of 2.582 acres (112,470 sq. ft.) of land, more or less, within these metes and bounds.

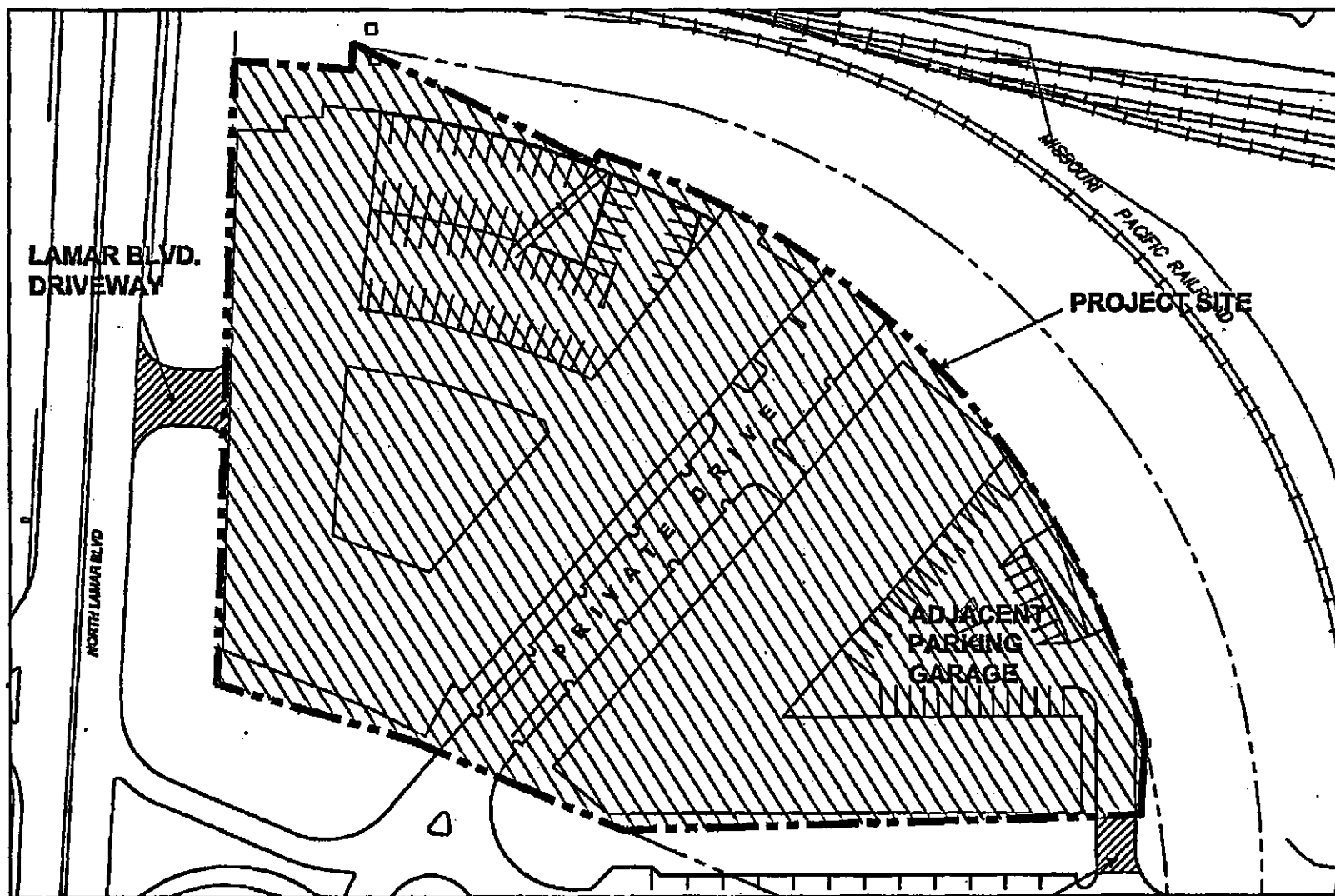
I, JOHN T. BILNOSKI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A LAND TITLE SURVEY WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

BURY & PARTNERS, INC.  
ENGINEERS-SURVEYORS  
3345 BEE CAVES ROAD, SUITE 200  
AUSTIN, TEXAS 78746

  
JOHN T. BILNOSKI  
NO. 4998  
STATE OF TEXAS

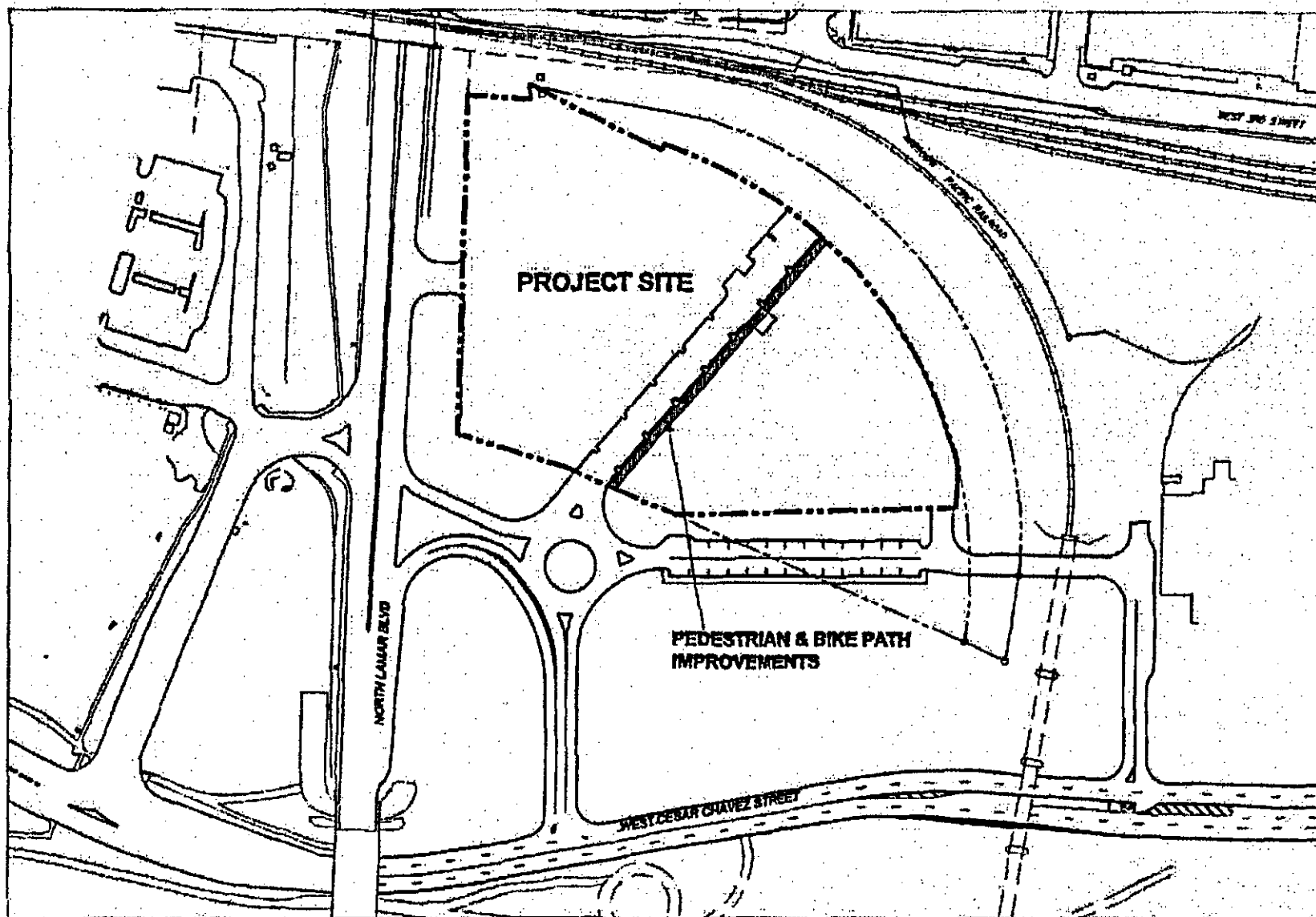
7/30/04  
DATE





PROPOSED JOINT  
ACCESS DRIVE

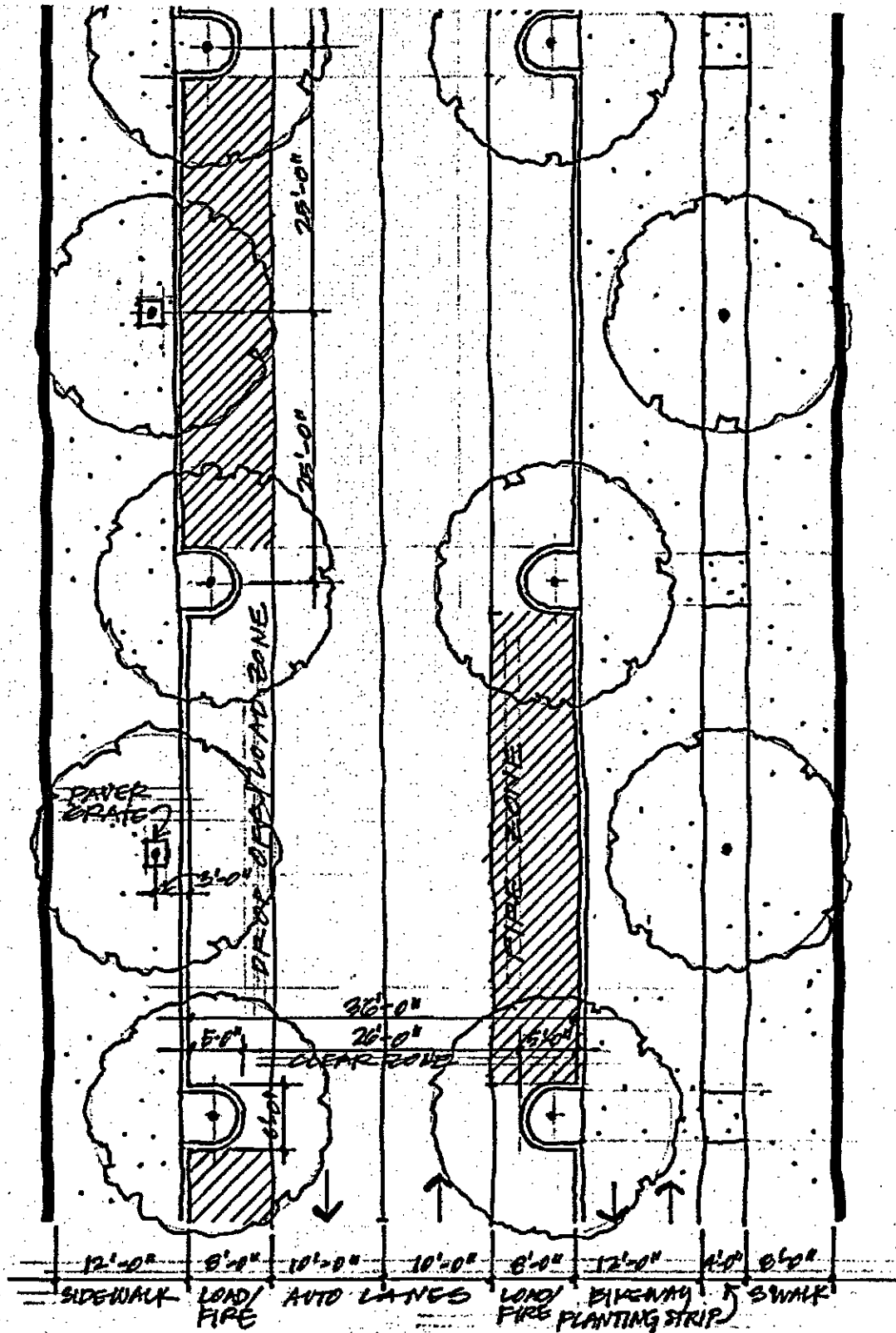
EXHIBIT B



**EXHIBIT C**

# EXHIBIT C

## PAGE 2



GABLES DRIVEWAY: WITH STAGGERED FIRE /  
11.2.05 ROMA ✓ DROP OFF ZONES PER  
COA FIRE DEPT.

## **EXHIBIT C**

### **Page 3**

#### **PEDESTRIAN PATH AND BICYCLE PATH IMPROVEMENTS**

The Pedestrian Path and Bicycle Path Improvements referenced in Section 3.06 of the agreement, to be constructed by Gables in the area of the private drive easement is described as follows:

The Pedestrian Path is to be a sidewalk adjacent to building(s) of the Project on the east side of the private drive. It is to be constructed of a hard surface paving material of Gables' choosing with a minimum width of eight (8) feet and separated from the Bicycle Path with a landscaped buffer with a minimum width of four (4) feet.

The Bicycle Path is to be a continuous trail adjacent to the Pedestrian Path and separated from it by the landscaped buffer. It is to be separated from automobile drop-off and fire zones with a six (6) inch high curb, and separated from moving automobile traffic with curbed bulb-outs containing trees. It is to be constructed of concrete, to City of Austin bikeway standards, and colored and textured to match other connecting trails as developed for the Pfluger Bridge Extension and Bowie Street Pedestrian and Bicycle Underpass Projects. It is to have a minimum width of 12 (twelve) feet from face of curb, and curb ramps at intersecting roads and driveways are to extend the full width of the Path. Bikeway markings and signage will be specified and installed as part of the Pfluger Bridge Extension and Bowie Street Underpass project.

The Private Drive containing the Pedestrian Path and Bicycle Path easement will contain shade trees on both sides of the drive at 25 (twenty-five) feet on center maximum.

## **EXHIBIT D**

### **Insurance and Bond Requirements**

#### **A. General Requirements**

Gables shall forward certificates of insurance with the endorsements required below to the City as verification of coverage prior to commencement of any professional or construction services hereunder, EXCEPT that Gables shall have in place a policy of commercial general liability insurance meeting the requirements of this Agreement commencing on the Effective Date. To the extent that the specific endorsements referenced herein are unavailable or that equivalent endorsements are available, the substitution of equivalent endorsements will be permitted subject to the reasonable approval of the City.

Gables shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of Gables hereunder and is not a limitation of liability on the part of Gables.

Gables must submit certificates of insurance for all contractors and/or subcontractors to the City prior to the commencement of design or construction work on the Improvements and the City will review and approve the certificates, which comply with the requirements of this Agreement, within five days of receipt.

Gables' and all contractor's and subcontractor's insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance must contain the following information:

Attn: Director, Public Works  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767

The "other" insurance clause must not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Agreement, covering both the City and Gables, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Agreement, Gables, contractors and subcontractors must carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision

or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

Gables shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement.

Gables and any contractor or subcontractor responsible for maintaining insurance shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance.

The City may review the insurance requirements set forth herein during the Term and may make reasonable adjustments to insurance coverages, limits, and exclusions when reasonably deemed necessary and prudent by the City based upon applicable changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company(ies) and Gables.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of Gables.

**B. Specific Requirements**

**Worker's Compensation and Employers' Liability Insurance.** Coverage must be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat.). The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.

- (a) Gables', its contractor's and subcontractor's policy shall apply to the State of Texas and include these endorsements in favor of the City:
  - (i) Waiver of Subrogation, Form WC 420304
  - (ii) Thirty days Notice of Cancellation, Form WC 420601

**Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A and B.

- (a) The policy must contain the following provisions:
  - (i) Blanket contractual liability coverage for liability assumed under this contract and all contracts related to this project.
  - (ii) Independent contractor's coverage.
  - (iii) Products/completed operations liability for the duration of the warranty period.

(b) The policy must also include these endorsements in favor of the City:

- (i) Waiver of Subrogation, endorsement CG 2404
- (ii) Thirty days notice of cancellation, endorsement CG 0205
- (iii) The City listed as an additional insured, endorsement CG 2010

**Business Automobile Liability Insurance.** Gables, its contractor and subcontractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage,

(a) The policy must include these endorsements in favor of the City of Austin:

- (i) Waiver of subrogation, endorsement TE 2046A
- (ii) Thirty days notice of cancellation, endorsement TE 0202A
- (iii) The City listed as an additional insured, endorsement TE 9901B

**Property Insurance.** If any of the City's property is in the care, custody or control of Gables, then Gables shall provide property coverage on an "all risk of physical loss" form. The coverage must be provided on a replacement cost basis for the 100% value of the City's property. If property is being transported or stored off site by Gables, then transit and storage coverage must also be provided. The City shall be endorsed onto the policy as a loss payee.

**Hazardous Material Insurance.** If applicable, for work that involves asbestos or any hazardous materials or pollution defined as asbestos, any contractor or subcontractor responsible for such work must comply with the following insurance requirements in addition to those specified above:

- (a) Provide an asbestos abatement endorsement to the commercial general liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy must not exclude asbestos or any hazardous materials or pollution defined as asbestos, and must provide "occurrence" coverage without a sunset clause. The policy must provide 30 day notice of cancellation and waiver of subrogation endorsements in favor of Gables and The City.
- (b) Any contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49



CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

- (c) The contractor shall submit complete copies of the policy providing pollution liability coverage to Gables and the City.

**Performance and Payment Bonds.** In substantial compliance with the provisions of Chapter 2253 of the Texas Government Code, Gables shall require its general contractor, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Additional Improvements, to furnish and deliver to the City, legally issued surety bonds in a form approved by the City, with the City and Gables named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Additional Improvements and, upon the failure of the general contractor to so furnish and deliver all of the same in form, tenor and execution and with sureties satisfactory to the City, no rights obtain thereunder to Contractor, no construction of the Additional Improvements may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and Gables will be in material default under this Agreement.

**Payment Bond.** Gables shall require the general contractor to provide a payment surety bond legally issued, meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full, and complete payment of all subcontractors and suppliers.

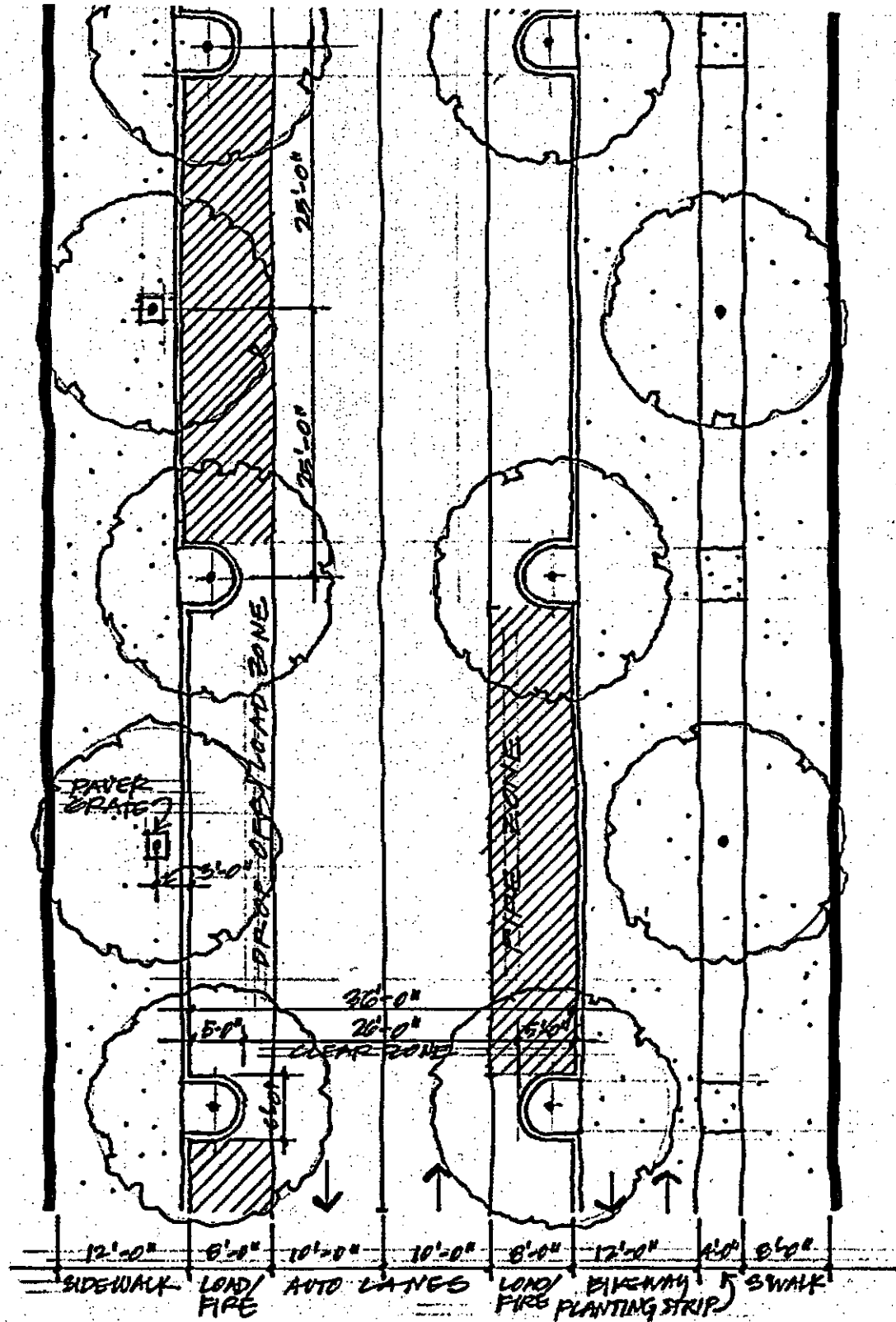
**Performance Bond.** Gables shall require contractor to provide a performance surety bond legally issued, meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full and complete performance by the general contractor of these covenants and agreements contained in the contract documents.

**EXHIBIT E**  
**Cost Participation in Improvements**

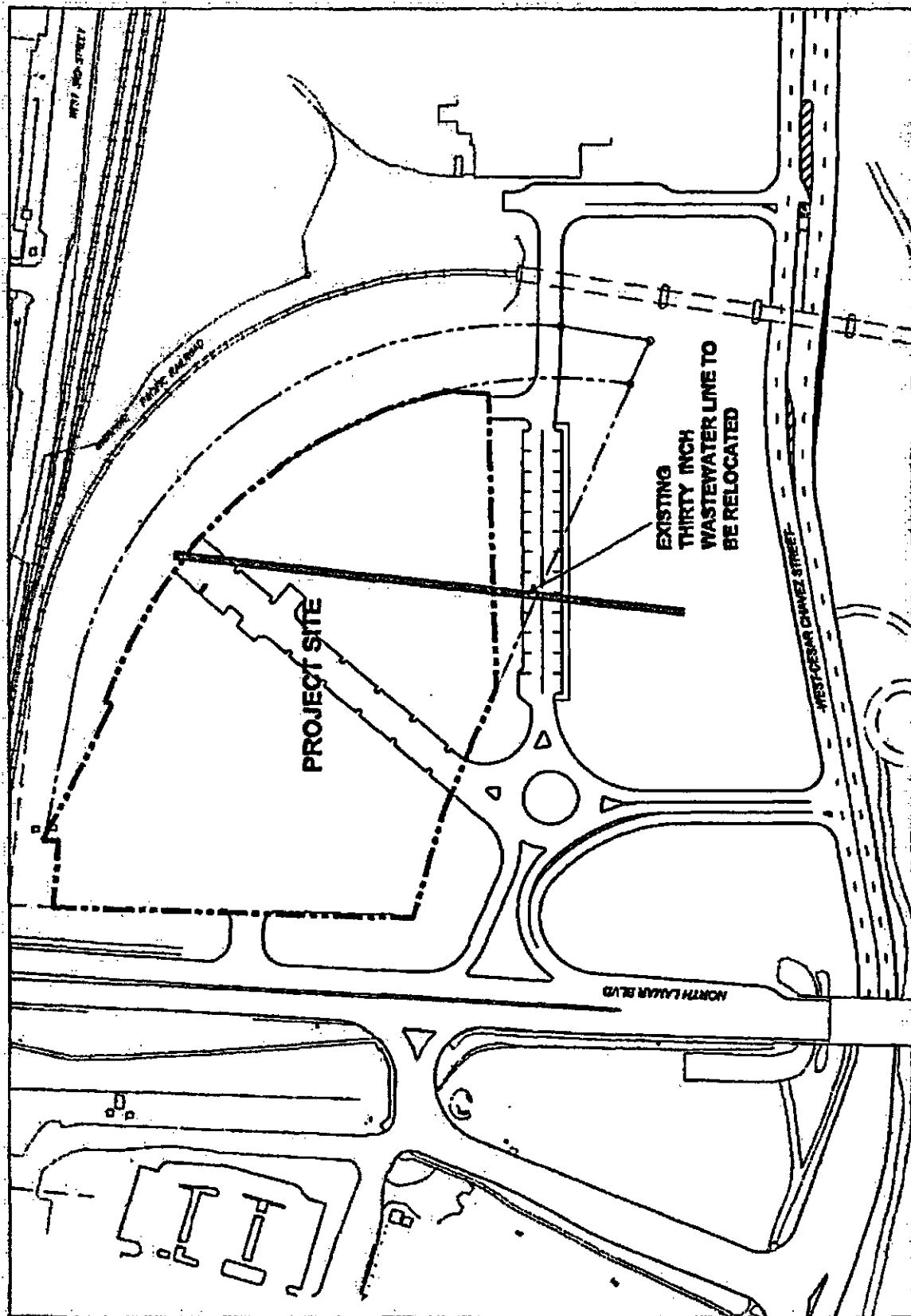
City costs and contributions may include third party funding.

Subject to available funding, the City may cost participate in the development of the Improvements. In such an event, the eligible costs for reimbursement will include the so-called "hard costs" of construction, as evidenced by the amounts paid to the general contractor for the performance of the Work, and the so-called "soft costs" of the fees to be paid under this Agreement, design fees, permit and inspection fees, the construction management fee, and other professional services fees, but will exclude the costs of Gables' financing and Gables' accounting and legal fees.

# EXHIBIT I



GABLES DRIVEWAY WITH STAGGERED FIRE /  
 71.2.05 ROMA DROP OFF ZONES PER  
 COA FIRE DEPT.



**EXHIBIT 'K'**

**PEDESTRIAN PATH AND BIKE PATH EASEMENT**

**THE STATE OF TEXAS   §  
                                  §  
COUNTY OF TRAVIS   §**

**KNOW ALL PERSONS BY THESE PRESENTS:**

THAT Lion Gables Realty Limited Partnership, a Delaware limited partnership, (hereinafter called "Grantors" whether one or more), in consideration of the sum of \$10.00 and other good and valuable consideration to Grantors in hand paid by the City of Austin, the receipt and sufficiency of which is acknowledged, have this day GRANTED AND CONVEYED, and by these presents do GRANT AND CONVEY, unto the City of Austin, a municipal corporation situated in the Counties of Hays, Travis and Williamson, Texas, and whose address is P.O. Box 1088, Austin, Travis County, Texas 78767-8839, ATTN: Real Estate Services Division, a pedestrian path and bike path easement (the "Easement") to construct, use, maintain and replace a pedestrian path and bike path to provide interconnectivity with those certain adjacent City of Austin pedestrian path and bike path improvements known as the Pfluger Pedestrian Bridge Extension and the Bowie Street Pedestrian Underpass, in, over, upon, and across the following described land:

All of that certain tract, piece or parcel of land, lying and situated in Travis County, Texas, and more particularly described in EXHIBIT "A", which is attached hereto and made a part hereof for all purposes ("Property").

TO HAVE AND TO HOLD the Easement and easement rights perpetually to the City of Austin, and its successors and assigns, together with the right and privilege at any and all times to enter the Property, or any part thereof, to use, maintain, and replace the pedestrian path and bike path improvements.

Grantors reserve the right to use the Property in any manner that does not interfere with its use of the Easement and easement purposes described herein, such as cross walks, provided Grantors may not place a building or other structure or obstruction in the Property and no license shall be required for such non-interfering uses.

The Property described in Exhibit "A" is an approximation of the location of the land subject to the Easement and Grantors and the City of Austin agree that the exact location of the Easement will be subject to further definition by a metes and bounds survey, will be in substantial conformance to the location described in attached Exhibit "A", and will be further subject to the approval of the City of Austin's Manager of Real Estate Services, such approval not to be unreasonably withheld or delayed.

GRANTORS do hereby bind themselves, their heirs, successors, assigns and legal representatives to warrant and forever defend all and singular this Easement and all related rights unto the said City of Austin, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, when the claim is made by through or under Grantors, but not otherwise.

Executed on this, the \_\_\_\_ day of \_\_\_\_\_, 2005.

LION GABLES REALTY LIMITED  
PARTNERSHIP,  
a Delaware limited partnership

By: Gables GP, Inc.  
a Texas corporation,  
its sole general partner

By: \_\_\_\_\_

Ben Pisklak, Vice President

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS     §

THIS INSTRUMENT was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Ben Pisklak, Vice President, of Gables GP, Inc., a Texas corporation, general partner of Lion Gables Realty Limited Partnership, a Delaware limited partnership, of said corporation and partnership.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name of Notary  
My Commission Expires: \_\_\_\_\_

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER**

**CONSENT OF LIENHOLDER**

**THE UNDERSIGNED**, being the holder of a \_\_\_\_\_ lien dated \_\_\_\_\_, 20\_\_\_\_, recorded at Volume \_\_\_\_\_, Page \_\_\_\_\_, Real Property Records of \_\_\_\_\_ County, Texas, securing the payment of an obligation in the amount of \$\_\_\_\_\_, hereby consents to the foregoing Water Line Easement and agrees that its \_\_\_\_\_ lien is subject to and subordinate to the Water Line Easement, and that the undersigned has authority to execute and deliver this Consent of Lien holder, and that all necessary acts necessary to bind the Lien holder have been taken.

**NAME OF LIENHOLDER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SWORN TO AND SUBSCRIBED** before me on the \_\_\_\_\_ day of \_\_\_\_\_, .

Seal

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Printed/Typed Name of Notary

My Commission Expires: \_\_\_\_\_

### AFFIDAVIT AS TO DEBTS AND LIENS

**BEFORE ME**, the undersigned authority personally appeared \_\_\_\_\_ (name of Affiant) known to me to be the person whose name is subscribed to this Affidavit, acting in the capacity of \_\_\_\_\_ for \_\_\_\_\_, a \_\_\_\_\_ duly authorized to do business in the State of Texas, owner of the property that is the subject of the foregoing instrument (the "Property"), who being duly sworn, on oath, deposed and stated the following:

1. My name is \_\_\_\_\_. I am above the age of 18 years, of sound mind, have never been convicted of a felony or crime of moral turpitude, and am fully qualified to make this Affidavit.

2. I am authorized to make this Affidavit in the capacity of \_\_\_\_\_ (title), for \_\_\_\_\_ authorized to do business in the State of Texas, owner of the Property that is described in the foregoing instrument ("Owner").

3. I have personal knowledge of the facts contained herein as an officer of \_\_\_\_\_ and I have recently reviewed the corporation's records concerning the Property. On the basis of my personal knowledge, after diligent inquiry, I hereby attest that, as of the date of this Affidavit:

(a) All labor, services and materials provided to the Property for improvements, fixtures, and furnishings, or otherwise, at the instance and request of the Owner, have been paid in full and no liens have been filed or exist with respect to the Property;

(b) There are no actions, proceedings, judgments, bankruptcies, liens or executions filed or pending against the Owner that would affect the Property; and

(c) As of the date of this Affidavit, \_\_\_\_\_ is not a debtor in bankruptcy.

**SIGNED**, this \_\_\_\_ day of \_\_\_\_\_, .

**AFFIANT:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed/Typed Name of Affiant**



**STATE OF TEXAS**

§

**COUNTY OF TRAVIS**

§

§

On the \_\_\_\_\_ day of \_\_\_\_\_, , before me \_\_\_\_\_ (name of notary),  
Notary Public, personally appeared \_\_\_\_\_ (name of Affiant),  
\_\_\_\_\_ (title) of \_\_\_\_\_, personally known to me to be the  
person whose name is subscribed to the within instrument and acknowledged to me that he  
executed the same in his authorized capacity, and that by his signature on the instrument the  
person or the entity upon behalf of which the person acted, executed the instrument.

**WITNESS my hand and official seal**

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**After Recording Please Return to:**

City of Austin  
Department of Public Work  
Real Estate Services Division  
505 Barton Springs Road, Suite 1350  
Austin, Texas 78704

Project Name: \_\_\_\_\_

## **EXHIBIT L-1**

### **QUITCLAIM DEED**

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

Pursuant to Section 4.02, Bowie Street Right of Way Exchange, of the Master Agreement between Lion Gables Realty Limited Partnership, a Delaware limited partnership ("Gables"), and the City of Austin, a Texas home rule city (the "City"), and subject to the requirements of Section 272.001 of the Texas Local Government Code, Gables hereby exchanges, abandons, releases and quitclaims its interest, if any, in (i) the public streets dedicated by (a) implication, as determined in a lawsuit between the State of Texas, the City and the Missouri Pacific Railway Company, Cause No. 477,213 in the 201<sup>st</sup> Judicial District Court of Travis County, Texas, affirmed by the Third Court of Appeals in Case No. 3-92-466-CP, a copy of the judgment with field notes being attached hereto as Exhibit "A" and (b) by ordinance as set forth in Ordinance No. 85-0110-X, a copy of the Ordinance being attached as Exhibit "B", and (ii) the private right-of-access easements in the deed to the 0.609 acre parcel described in attached Exhibit "C" in consideration of the City's agreement to exchange, abandon, release and quitclaim its interest, if any, in and to the Bowie Street Right-of-Way.

**LION GABLES REALTY LIMITED  
PARTNERSHIP**, a Delaware limited  
partnership

By: Gables GP, Inc.  
a Texas corporation,  
its sole general partner

By: \_\_\_\_\_  
Ben Pisklak, Vice President

**STATE OF TEXAS**

§  
§  
§

**COUNTY OF TRAVIS**

**THIS INSTRUMENT** was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Ben Pisklak, Vice President, of Gables GP, Inc., a Texas corporation, general partner of Lion Gables Realty Limited Partnership, a Delaware limited partnership, of said corporation and partnership.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name of Notary  
My Commission Expires:  
\_\_\_\_\_

**After recording Return to:**

**City of Austin Real Estate Services  
505 Barton Springs Road, Suite 1350  
Austin Texas 78704**

**EXHIBIT "A"**

**EXHIBIT "B"**

**EXHIBIT "C"**

**EXHIBIT L-2**

**QUITCLAIM DEED**

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

Pursuant to Section 4.02, Bowie Street Right of Way Exchange, of the Master Agreement between Lion Gables Realty Limited Partnership, a Delaware limited partnership ("Gables"), and the City of Austin, a Texas home rule city (the "City"), and subject to the requirements of Section 272.001 of the Texas Local Government Code, the City hereby exchanges, abandons, releases and quitclaims its interest, if any, in the portion of the Bowie Street Right-of-Way located to the south of the northern property line of the tract of real property described in attached Exhibit "A" to Gables in consideration of Gables' agreement to exchange, abandon, and release and quitclaim its interests in the public streets dedicated by (i) implication, as determined in a lawsuit between the State of Texas, the City and the Missouri Pacific Railway Company, Cause No. 477,213 in the 201<sup>st</sup> Judicial District Court of Travis County, Texas, affirmed by the Third Court of Appeals in Case No. 3-92-466-CP (ii) by ordinance as set forth in Ordinance No. 85-0110-X, and (iii) the private right-of-access easements in the deed to the 0.609 acre parcel described in that certain Special Warranty Deed of record at Document No. 2002000252 of the Official Public Records of Travis County, Texas.

In addition, this Quitclaim Deed is subject to the following conditions:

- (1) Easements will be retained for the Thirty Inch Sewer Main located in and under the Property, a public utility easement, a portion of the Pedestrian Path and Bicycle Path Easement, and to the extent applicable, a storm sewer inlet and storm sewer line easement to provide drainage from the area of the adjacent Bowie Street Pedestrian Underpass and associated drainage area.
- (2) Subject to the site planning process for the development of the Property, the locations of the easements will be further defined by metes and bounds surveys and re-recorded in separate documents.

Approved as to Form:

**CITY OF AUSTIN**

\_\_\_\_\_  
Gordon R. Bowman  
Assistant City Attorney

By: \_\_\_\_\_  
Lauraine Rizer, Manager  
Real Estate Services Division  
Public Works Department

THE STATE OF TEXAS   §  
                                 §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on \_\_\_\_\_, 2005, by Lauraine Rizer, Manager of Real Estate Services Division, Public Works Department of the City of Austin, on behalf of the City of Austin.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "A"**

**EXHIBIT L-3**

**MAPSCO Page** \_\_\_\_\_  
**Grid** \_\_\_\_\_

**WASTEWATER LINE EASEMENT**

**THE STATE OF TEXAS**                    )  
  )  
**COUNTY OF TRAVIS**                    )     **KNOW ALL BY THESE PRESENTS:**

**THAT LION GABLES REALTY LIMITED PARTNERSHIP**, a Delaware limited partnership, hereinafter referred to as "Grantor," whether one or more, for and in consideration of the sum of **TEN DOLLARS (\$10.00)** and other good and valuable consideration, to Grantor in hand paid by the **CITY OF AUSTIN, TEXAS**, the receipt and sufficiency of which is hereby acknowledged and confessed and for which no lien, express or implied, is retained, have this day **GRANTED, SOLD, AND CONVEYED** unto the **CITY OF AUSTIN**, a municipal corporation, situated in the Counties of Travis, Williamson and Hays, State of Texas, and whose address is P.O. Box 1088, Austin, Texas 78767-8839, **ATTN: Director, Austin Water Utility**, its successors and assigns (hereinafter "Grantee"), an easement for the construction, operation, maintenance, repair, replacement, upgrade, decommissioning and removal of a wastewater line and associated appurtenances and making connections therewith in, upon and across the following described land, to wit:

All that certain tract, piece or parcel of land, lying and being situated in the County of Travis, State of Texas, described in **EXHIBIT A** attached hereto and made a part hereof for all purposes, to which reference is hereby made for a more particular description of said property (the "Easement Tract").

**TO HAVE AND TO HOLD** the same perpetually to the City of Austin and its successors and assigns together with the right and privilege at any and all times to enter the Easement Tract, or any part thereof, for the purpose of construction, operation, maintenance, repair, replacement, upgrade, decommissioning and removal of wastewater lines and associated appurtenances and making connections therewith provided, however, that Grantor reserves the right to enter upon and use the Easement Tract but in no event shall Grantor (i) use the Easement Tract in any manner that interferes in any material way or is inconsistent with the rights granted hereunder, or (ii) erect or permit to be erected a building, structure or irrigation systems on any portion of the Easement Tract. Notwithstanding the prohibitions in the preceding sentence, Grantor specifically reserves to itself, its successors and assigns, the right to place, construct, repair and maintain driveways, surface parking areas, sidewalks and landscaping (collectively, the "surface improvements") on and in the Easement Tract, which right to place and construct the surface improvements is subject to the following: (i) Grantee's review and approval of the installation or construction plans for the surface improvements, such approval not to be unreasonably denied or delayed, and (ii) the condition that no trees will be installed in the Easement Tract as a part of the otherwise permitted landscaping. Grantee shall be obligated to restore the surface of the easement at Grantee's sole cost and expense, including the restoration of any sidewalks, driveways or similar surface improvements located upon or adjacent to the Easement Tract which have been removed, relocated, altered, damaged or destroyed as a result of Grantee's use of the Easement granted hereunder provided, however, that Grantee shall not be obligated to restore or replace irrigation systems or other improvements installed in violation of the provisions of this Easement. In addition, in accordance with the written, published requirements of the City Code and City rules and regulations and at the sole cost



of the Grantor, Grantor may relocate the sewer line and this easement will be modified, amended, or replaced to acknowledge the new Easement Tract.

Grantor does hereby covenant and agree to WARRANT AND FOREVER DEFEND title to the Easement herein granted unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the matters set forth herein, when the claim is by, through or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on this \_\_\_\_ day of \_\_\_\_\_ 2005.

**GRANTOR:**

**LION GABLES REALTY LIMITED  
PARTNERSHIP**, a Delaware limited partnership

By: Gables GP, Inc.  
a Texas corporation,  
its sole general partner

By: \_\_\_\_\_

Name: Ben Pisklak

Title: Vice President

STATE OF TEXAS           §  
                                  §  
COUNTY OF TRAVIS     §

THIS INSTRUMENT was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Ben Pisklak, Vice President, of Gables GP, Inc., a Texas corporation, general partner of Lion Gables Realty Limited Partnership, a Delaware limited partnership, of said corporation and partnership.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name of Notary  
My Commission Expires: \_\_\_\_\_

**CONSENT OF LIENHOLDER**

THE UNDERSIGNED, being the holder of a \_\_\_\_\_ lien dated \_\_\_\_\_, 20\_\_\_\_, recorded at Volume \_\_\_\_\_, Page \_\_\_\_\_, Real Property Records of \_\_\_\_\_ County, Texas, securing the payment of an obligation in the amount of \$\_\_\_\_\_, hereby consents to the foregoing Wastewater Line Easement and agrees that its \_\_\_\_\_ lien is subject to and subordinate to the Wastewater Line Easement, and that the undersigned has authority to execute and deliver this Consent of Lien holder, and that all necessary acts necessary to bind the Lien holder have been taken.

**NAME OF LIENHOLDER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SWORN TO AND SUBSCRIBED** before me on the \_\_\_\_\_ day of \_\_\_\_\_, .

Seal

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Printed/Typed Name of Notary

My Commission Expires: \_\_\_\_\_

## AFFIDAVIT AS TO DEBTS AND LIENS

BEFORE ME, the undersigned authority personally appeared \_\_\_\_\_ (name of Affiant) known to me to be the person whose name is subscribed to this Affidavit, acting in the capacity of \_\_\_\_\_ for \_\_\_\_\_, a \_\_\_\_\_ duly authorized to do business in the State of Texas, owner of the property that is the subject of the foregoing instrument (the "Property"), who being duly sworn, on oath, deposed and stated the following:

1. My name is \_\_\_\_\_. I am above the age of 18 years, of sound mind, have never been convicted of a felony or crime of moral turpitude, and am fully qualified to make this Affidavit.

2. I am authorized to make this Affidavit in the capacity of \_\_\_\_\_ (title), for \_\_\_\_\_ authorized to do business in the State of Texas, owner of the Property that is described in the foregoing instrument ("Owner").

3. I have personal knowledge of the facts contained herein as an officer of \_\_\_\_\_ and I have recently reviewed the corporation's records concerning the Property. On the basis of my personal knowledge, after diligent inquiry, I hereby attest that, as of the date of this Affidavit:

(a) All labor, services and materials provided to the Property for improvements, fixtures, and furnishings, or otherwise, at the instance and request of the Owner, have been paid in full and no liens have been filed or exist with respect to the Property;

(b) There are no actions, proceedings, judgments, bankruptcies, liens or executions filed or pending against the Owner that would affect the Property; and

(c) As of the date of this Affidavit, \_\_\_\_\_ is not a debtor in bankruptcy.

SIGNED, this \_\_\_\_ day of \_\_\_\_\_.

AFFIANT:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed/Typed Name of Affiant

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

On the \_\_\_\_\_ day of \_\_\_\_\_, , before me \_\_\_\_\_ (name of notary),  
Notary Public, personally appeared \_\_\_\_\_ (name of Affiant),  
\_\_\_\_\_ (title) of \_\_\_\_\_, personally known to me to be the  
person whose name is subscribed to the within instrument and acknowledged to me that he  
executed the same in his authorized capacity, and that by his signature on the instrument the  
person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

Accepted by \_\_\_\_\_

Project # \_\_\_\_\_

RETURN TO:

David Rinn, Engineering Associate

Alfredo Torres, Engineering Associate

Austin Water Utility

P.O. Box 1088

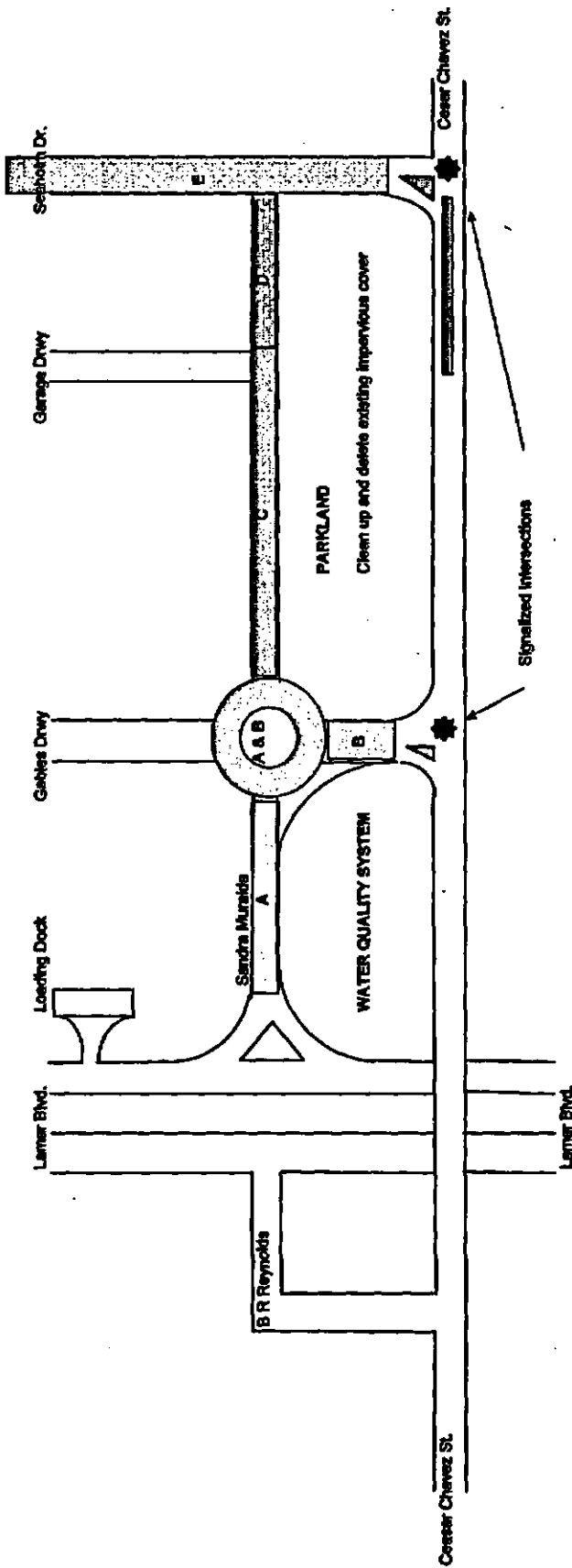
Austin, Texas 78767-1088

**EXHIBIT " M "**

<b>Improvements (Total Estimated Cost)</b>	<b>% of Eligible Project Costs Subject to Reimbursement</b>	<b>COA Maximum Funding by Improvement</b>	<b>Funding Source</b>
<b>ROW (\$ 1,884,181)</b>		<b>\$1,397,377</b>	<b>1/4 Cent</b>
Overall Roadway Soft Costs	75.00%		
Cesar Chavez	77.20%		
Seaholm Dr. (Rdway E)	77.20%		
Town Lake Dr. (E. arm) - (Rdway C + D)	67.10%		
Sandra Muralda Dr. (Rdway A + B)	79.60%		
<b>Public Park (\$275,000 + perpetual maintenance)</b>	<b>0.00%</b>	<b>\$0</b>	<b>NA</b>
<b>Bio-Filtration Meadow (\$721,462 + perpetual maintenance)</b>	<b>45.00%</b>	<b>\$324,658</b>	<b>1/4 cent, Watershed Fund (\$67k)**</b>
<b>** Funding based on meeting WPDR criteria</b>			
<b>Relocate 30" Line (\$610,632)</b>	<b>0.00%</b>	<b>\$0</b>	<b>NA</b>
<b>Traffic Signals (\$207,625)</b>		<b>\$179,038</b>	<b>Transportation Fund/ 1/4 cent fund</b>
Sandra Muralda	*		
Seaholm	*		
Pfluger Bridge Pole	*		
Interconnect	*		
<b>* Gables will pay their pro rata share of the traffic signal projects which is estimated to be \$28,587</b>			
<b>Offsite Paving/Drainage Fees (\$164,476 )</b>	<b>75.00%</b>	<b>\$122,606</b>	<b>1/4 Cent</b>
Construction Inspection			
Landscape			
Permit			
<b>Other Fees (\$184,796 )</b>	<b>0.00%</b>	<b>\$0</b>	<b>NA</b>
<b>Pedestrian Path &amp; Bike Path (\$ 20,000)</b>	<b>0.00%</b>	<b>\$0</b>	<b>NA</b>
<b>Total COA Funds</b>		<b>\$2,023,679</b>	
Transportation Fund		\$89,819	
Watershed Fund		\$67,000	
<b>Total 1/4 Cent Funds</b>		<b>\$1,867,160</b>	

# ATTACHMENT 1

## Roadway and Signal Changes



Land Use	Segment A	Segment B	Segment C	Segment D	Segment E
Retail	7.7%	16.5%	18.7%	18.7%	13.0%
Gables Apartments	4.4%	8.8%	10.8%	10.8%	7.3%
General Office	1.5%	3.0%	3.6%	3.6%	2.5%
SubTotal	13.5%	27.3%	32.9%	32.9%	22.8%
Existing Traffic	71.8%	66.0%	0.0%	0.0%	0.0%
Seasholm	14.7%	6.7%	87.1%	67.1%	77.2%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Based on Daily Volumes

Currently assumes 25% of Seasholm traffic uses West Ave.

## **EXHIBIT 'N'**

### **GABLES PARK PLAZA MASTER LICENSE AGREEMENT**

**THE STATE OF TEXAS   §  
                                  §       KNOW ALL MEN BY THESE PRESENTS THAT:  
COUNTY OF TRAVIS   §**

This GABLES PARK PLAZA MASTER LICENSE AGREEMENT (the "Agreement") is executed effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_ by LION GABLES REALTY LIMITED PARTNERSHIP, a Delaware limited partnership ("Gables") and the CITY OF AUSTIN, a Texas home-rule municipal corporation (the "City"), acting through its duly authorized agent the City Manager or designee, who for purposes of this Agreement is the Manager of Real Estate Services Division of the Department of Public Works (the "Property Manager").

#### **RECITALS**

WHEREAS, Gables has contracted with Lumbermen's Investment Corporation ("Lumbermen's") to purchase those two tracts of land comprising approximately 4.524 acres, located on the eastern side of Lamar Boulevard between the Union Pacific Railroad and adjoining City real property, as more particularly described in Exhibit "A" (the "Property").

WHEREAS, Gables currently intends to develop a mixed-use project on the Property that may include, but not necessarily be limited to, residential, retail, office, and non-commercial uses, (the "Project").

WHEREAS, Gables and the City currently intend to construct certain public improvements in the vicinity of the Project, as generally depicted on Exhibits "B-1" through "B-8" (the "Improvements").

WHEREAS, Gables and the City have entered into a Master Agreement and individual Community Facilities Cost Reimbursement Agreements with respect to the design and construction of certain of the Improvements.

WHEREAS, pursuant to the Master Agreement and Community Facilities and Cost Reimbursement Agreements, Gables will design and construct certain items of City infrastructure, including the following Improvements: (i) a Bio-Filtration Meadow and related facilities on the tract of land described in the attached Exhibit "B-5" (the "Bio-Filtration Meadow"), (ii) parkland and accessory improvements on the tracts of land described in the attached Exhibit "B-7" ("Park"); (iii) pedestrian path and bike path improvements on City easement on the tract of land described on the attached Exhibit "B-8" ("Pedestrian Path and Bike Path") and (iv) public street improvements, including street construction, traffic improvements

and, in coordination with the City, traffic signal installation on the tracts of land described in the attached Exhibits "B-6" (the "Right-of-Way").

WHEREAS, Gables and the City wish to enter into this Agreement for the purpose of granting permission to Gables to construct the Improvements and to maintain certain Improvements within the tracts of land described as the Bio-Filtration Meadow, Park, Pedestrian Path and Bike Path and Right-of-Way.

NOW THEREFORE, in consideration of the mutual covenants and conditions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Gables and the City hereby agree as follows:

1. Grant of License. In addition to rights available to the general public, the City grants to Gables and to the successors and assigns of all or any portion of Gables' interests, the right to use the applicable portions of the Bio-Filtration Meadow, Park, Pedestrian Path and Bike Path and Right-of-Way, collectively referred to herein as the "Licensed Property", for the following described purposes:

a. Right-of-Way. Pursuant to Section 3.06 of the Master Agreement, Gables and their respective contractors, subcontractors, agents and representatives shall have the right to perform construction activities that may be required for the initial construction of the public streets, including but not limited to street construction, street reconstruction and improvement, utility adjustment, installation of water and wastewater lines, traffic safety improvements, traffic signal improvements in coordination with the City, street light, and associated storm water drainage, sidewalk, streetscape and landscaping improvements, as described in the Master Agreement to be constructed by Gables (the "Right-of-Way Improvements") within the Right-of-Way pursuant and subject to the terms and conditions of the Community Facilities and Cost Reimbursement Agreements for the Right-of-Way Improvements (the design and construction of which shall be approved by the applicable City departments, such approval not to be unreasonably withheld or delayed), as more particularly described in the attached Exhibit "C" and collectively referred to as the "Right-of-Way Improvements."

b. Park Improvements. Pursuant to Section 3.07 of the Master Agreement, Gables and its contractors, agents and representatives shall have the right to construct, install, replace and upgrade landscaping, retaining walls, benches, trash receptacles, landscape irrigation systems, sidewalks, trails, ramps, steps, and other improvement items (the design and construction of which shall be approved by the applicable City departments, such approval not to be unreasonably withheld or delayed), as more particularly described in the attached Exhibit "D" and collectively referred to as the "Park Improvements."

c. Bio-Filtration Meadow Improvements. Pursuant to Section 3.05 of the Master Agreement, Gables and its contractors, subcontractors, agents and representatives shall have the right to construct, install, replace and upgrade the retaining walls, storm



water bio-filtration systems, landscaping and other improvement items (the design and construction of which shall be approved by the applicable City departments, such approval not to be unreasonably withheld or delayed), as more particularly described in the attached Exhibit "E" and collectively referred to as the "Bio-Filtration Meadow Improvements."

d. Pedestrian Path and Bike Path Improvements. Pursuant to Section 3.08 of the Master Agreement, Gables and its contractors, agents and representatives shall have the right to construct, install, replace and upgrade the pedestrian path and bike path, signage, and associated improvement items in the City's Pedestrian Path and Bike Path easement, including the associated storm water inlet and line, which will provide drainage from the area of the Bowie Street Pedestrian Underpass (the design and construction of which shall be approved by the applicable City departments, such approval not to be unreasonably withheld or delayed), as more particularly described in the attached Exhibit "F" and collectively referred to as the "Pedestrian Path and Bike Path Improvements."

e. Additional Improvements. Subject to the prior written approval of the Property Manager, Gables shall have, in addition to the rights reserved in the Pedestrian Path and Bike Path Easement, the right to construct and install additional Improvements to be maintained by Gables from time to time and to amend the attached Exhibits "C"- "F" or substitute new Exhibits "C"- "F", describing such additional Improvements, pursuant to Subsection 11h hereof. Gables shall submit plans and specifications of any such proposed additional Improvements to the Property Manager for review and approval and, upon the approval of the Property Manager, Gables will have the right to construct and install the approved additional Improvements in accordance with and described in an Amendment to the Agreement pursuant to Subsection 11h hereof.

f. Annual Fee. The annual license fee for such Improvements will be waived as long as the Director of the City's Public Works Department determines that the Improvements benefit the Licensed Property. In the event that the Director determines that the Improvements do not benefit the Licensed Property, the City will notify Gables that the annual fee will be assessed. It will be presumed that as long as Gables continues to maintain the Improvements described in 1a - 1d above, which constitute City infrastructure, that the fee will continue to be waived. In any case, the City agrees that a security deposit will not be required.

g. Maintenance of Improvements. Pursuant to the terms and conditions of Article VIII of the Master Agreement, Gables and the City will be responsible for their respective maintenance and repair obligations in connection with the Licensed Property.

(i) Gables' Ordinary and Ongoing Maintenance. Gables will have the right to enter upon and perform the ordinary and ongoing maintenance and repair and replacement of the Improvements described in the referenced exhibits and generally categorized as follows, subject to the City's responsibility for major

repairs set forth below, and excluding any improvements installed or constructed by the City or any third parties: (i) the Park Tracts, but excluding the hike and bike trails in the Park Tracts, (ii) the Pedestrian Path and Bike Path, (iv) certain streetscape and landscaping improvements located within the Right-of-Way, and (iv) the Bio-Filtration Meadow, constructed in accordance with Gables' approved site plan and as added by Gables through an amendment to this Master License Agreement, including, but not limited to, for example, mowing and edging of turf, trimming of trees and shrubs, replacement of dead or dying landscape plantings, replacement of landscape furniture, such as park benches, tables and trash receptacles, landscaping, litter control, animal waste control, trash receptacle control, irrigation system repair, insect control using an integrated pest management program approved by the City and, for the Bio-Filtration Meadow, routine silt abatement; but excluding the maintenance and repair of the above-referenced Improvements to be maintained, repaired and replaced by the City, but excluding any portion of the City's property located to the east of the Union Pacific's railroad overpass, any portion of the City's so-called "Crescent Tract", and the portion of the right-of-way abutting the Crescent Tract.

(ii) City's Ordinary and Ongoing Maintenance. The City will be responsible for the ordinary and ongoing maintenance of the hike and bike trails in the Park Tracts, on the Pfluger Pedestrian Bridge, and under the Bowie Street Underpass. The City will be responsible for any maintenance and/or repair of the Park Tracts or Bio-Filtration Meadow resulting from any special events permitted or otherwise allowed by the City on or adjacent to such tracts, specifically including but not limited to litter control. In addition, the City shall maintain, repair, and replace the public infrastructure improvements located within the Licensed Property, including but not limited to roadway base and surfaces, storm sewers, drainage structures, water and wastewater lines, electric lines, street lights, and traffic control devices, collectively referred to as the "Public Infrastructure Improvements", upon the completion and acceptance thereof for maintenance.

(iii) City's Major Repairs. The City will be responsible for the major repairs and maintenance of the Improvements with the exception of the Pedestrian Path and Bike Path Improvements which will be the responsibility of Gables. "Major repairs and maintenance" are defined as those made necessary by extraordinary or unforeseen events and include, but are not limited to, repair of significant portions of the Improvements described in subparagraphs (i) and (ii) above and located within the Licensed Property, including the repairs and/or replacement of walls, weirs, pipes, outlet structures, filter bed or other structural components of any Bio-Filtration Meadow. Major repair and maintenance will be performed to substantially the same level of quality as the original improvement.

(iv) Pedestrian Path and Bike Path. Gables will be responsible for the maintenance of the Pedestrian Path and Bike Path, including its capital repair and replacement, provided, if the City notifies Gables in writing of the need for

maintenance, repair or replacement, including ordinary and ongoing maintenance, of all or a portion of the Pedestrian Path and Bike Path, Gables will promptly provide for such repair, replacement or maintenance and in the event that Gables has not commenced such repair replacement or maintenance in a reasonable amount of time, the City will have the right, but not the duty to conduct such repair, replacement or maintenance with its own forces and may do so in an emergency event with telephone notice to Gables.

(v) Decorative Pavers. Gables shall be responsible for the maintenance, repair and replacement of any decorative pavers located on the Licensed Property, including any sidewalk and street accent pavers, installed by or at the request of Gables. The City shall be responsible for the maintenance, repair and replacement of any concrete sidewalks located within the Licensed Property. However, to the extent that any concrete sidewalks are located partially within and partially outside of the Licensed Property, the City shall only be required to maintain the portion of the sidewalk within its right-of-way.

(vi) Repair of Premises. In addition, Gables shall timely and properly maintain and repair the Improvements by ensuring that: (i) any irrigation system leaks are remedied within forty-eight (48) hours of the time they are discovered by Gables or Gables receives notice from the City; (ii) any damaged sidewalk or street accent pavers are repaired or replaced within ten (10) working days of the time they are discovered by Gables or Gables receives notice from the City; (iii) any sidewalk or street accent pavers that are damaged or removed by the installation or repair of utilities, traffic control devices, or streetlights are repaired or replaced within ten (10) working days after such installation or repair is complete, provided that Gables, respectively, shall make temporary repairs in the area of any damaged accent pavers and provide temporary safety measures in accordance with applicable regulations, as required to protect the traveling public prior to the completion of any maintenance or repairs and the City, in its discretion, may make any such temporary repairs and provide any such temporary safety measures. Gables agrees to use best efforts and reasonable commercial due diligence in the maintenance of the irrigation systems to ensure that the irrigation systems not be allowed to leak or to cause damage to the structural integrity of adjacent streets or their respective sidewalks. Nothing contained herein is intended to make Gables responsible for making emergency repairs to traffic control devices, traffic signs or any other public safety devices.

(vii) No Agency Relationship. The City will not be the agent or representative of Gables and will not be construed as the agent or representative of Gables in any of its activities under this Agreement.

2. Term. This Agreement begins on the effective date and continues thereafter for so long as the Licensed Property is used solely for one or more of the purposes delineated in Section 1 hereof, subject to earlier termination as set out in Section 8 hereof.

3. Limits on License.

a. City Facilities. The City reserves the present and future right of the City, and its successors, assigns, lessees, and grantees, to construct, install, establish, maintain, use, operate, and renew, at no cost or expense to Gables and with no duty of Gables to maintain: (i) any public utilities facilities and franchised public utilities within any available enclosed utility conduits or otherwise beneath the surface of its right-of-way and utility easements, (ii) its roadways or streets, and (iii) any drainage easements, Bio-Filtration Meadow, or other drainage areas or improvements, on, over, under, or adjacent to the Licensed Property (which improvements are collectively called the "City Facilities"), in a manner which is consistent with state law and City ordinances and which endeavors to be consistent and compatible with, and does not unreasonably interfere with, the construction, installation, use, operation, maintenance and repair of the Improvements and use of the Licensed Property by Gables and its respective contractors, subcontractors, agents and representatives pursuant to this Agreement. If any such construction installation, establishment, maintenance, use, operation or renewal of any such City Facilities prevents or otherwise unreasonably interferes with Gables' ability to maintain the Improvements or the Licensed Property, then Gables maintenance obligations will be proportionately reduced for as long as such interference continues. The exercise of any rights by the City hereunder with respect to the Pedestrian Path and Bike Path Improvements will be subject to the applicable terms and conditions of the Pedestrian Path and Bike Path easement.

b. Modifications to Improvements Licensed for Maintenance. Gables agrees to make any reasonable modifications to the Improvements licensed for Gables' maintenance hereunder, if the Property Manager reasonably determines such modifications are necessary to address public safety or accessibility concerns, provided that the costs of such modifications will be the responsibility of the City and such modifications do not unreasonably increase the maintenance obligations of Gables hereunder. In addition, the City may propose additional modifications to the Improvements licensed for Gables' maintenance and the Parties may agree to the modifications through an Amendment to the Agreement pursuant to Subsection 11h hereof.

c. Application of Ordinances. Unless otherwise permitted, authorized or preempted by the Community Facilities and Cost Reimbursement Agreements, the Master Agreement, this Agreement, or any other waivers, variances or exemptions granted by the City, all Improvements constructed, installed, maintained, repaired, replaced and upgraded by Gables and its contractors, subcontractors, agents and representatives and all other activities conducted by them on the Licensed Property shall be performed and conducted in compliance with the applicable ordinances and regulations of the City. However, in the event of any conflict between the terms and conditions of the Community Facilities and Cost Reimbursement Agreements, the Master Agreement, this Agreement, or any other waivers, variances or exemptions, and the applicable portions of Chapters 6-3 and 14-11 of the Code of the City of Austin, the

applicable provisions of such Chapters 6-3 and 14-11 shall control, except where the provisions of such Chapters are specifically referenced and overridden in this Agreement.

4. Repair or Relocate Existing City Facilities. Gables shall pay all reasonable and actual costs required to repair damage to or relocate existing City Facilities, which are damaged or destroyed or need to be relocated as a result of activities under this Agreement by or on behalf of Gables.

5. Covenant on Adjacent Property. This Agreement and Gables' obligations hereunder are subject to the condition precedent of reimbursement by the City to Gables under the Master Agreement and run as a covenant on the Property owned by Gables adjoining the Licensed Property until their expiration or revocation. Accordingly, Gables and each subsequent owner ("Owner") of an interest in all or any portion of the Property, as the case may be, shall be responsible for the performance of the agreements, covenants and conditions set forth herein insofar as the same affect the Property, or portion thereof, so owned and which accrue during the period of such Owner's ownership. Correspondingly, the responsibility of an Owner for the performance of the agreements, covenants and conditions set forth in this Agreement shall terminate upon the conveyance by such Owner of its interest, and, thereupon, the agreements, covenants and conditions set forth herein shall automatically be deemed to be assumed by the new Owner; provided, however, the existing Owner must notify the new Owner about the existence of this Agreement, which obligation may be fulfilled by way of reference to this Agreement (including its recording data in the Official Public Records of Travis County, Texas) in any instrument of conveyance by which the existing Owner transfers all or a portion of its interest in the Property.

6. Insurance. Gables, at its expense, shall provide a commercial general liability insurance policy with a combined single limit of not less than \$500,000, written by a company acceptable to the Property Manager and licensed to do business in Texas. The coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The Gables insurance policy must cover all perils arising from the activities of Gables and its officers, employees, agents, contractors, and invitees, related to the Improvements authorized to be placed on the Licensed Property and the activities authorized to be undertaken on the Licensed Property by this Agreement. Gables shall pay all deductibles stated in its policies. The insurance policies shall include the following provisions: (i) Additional Insured Endorsement in favor of the City of Austin, and (ii) forty-five (45) days Notice of Cancellation in favor of the City. A certificate of insurance evidencing coverage must be provided by each insurance company and delivered to the Property Manager with this executed Agreement. The foregoing insurance requirements do not relieve Gables of complying with any other applicable insurance requirements under the Master Agreement or Community Facilities and Cost Reimbursement Agreements, provided that Gables may satisfy its insurance obligations in this Agreement in one or more policies in Gables' sole discretion.

7. Indemnification. Subject to the limitations and exceptions in the last sentence of this Section, Gables hereby fully indemnifies, saves, and holds harmless the City, its officers, employees, agents, licensees, and invitees (collectively called "Indemnitees") against any and all liability, damage, loss, claims, demands, and actions of

any nature whatsoever, on account of personal injury (including, without limitation, Workers' Compensation and death claims), or property loss or damage of any kind whatsoever, which arises or is claimed to arise directly out of the construction, installation, operation, use maintenance, repair, restoration, or removal of the Improvements on the Licensed Property pursuant to this Agreement by Gables or its contractors, subcontractors, agents or representatives. Gables must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based thereon using counsel satisfactory to the City Attorney, and pay all of its own attorneys' fees and all other cost and expenses of any kind arising from any aforesaid liability, damage, loss, claims, demands, or actions, but not including the costs of third party counsel or consultant that may be hired by any one or more of the Indemnitees. This indemnification provision does not apply to any claims, suits, damage, costs, losses, or expenses (i) for which the City has been compensated by insurance provided under Section 6 hereof, or (ii) to the extent arising from the willful or grossly negligent acts of the City; provided that for the purposes of the foregoing, the City's act of entering into this Agreement cannot be deemed to be a "willful act."

**8. Termination.**

a. Termination by Gables. Gables may terminate this Agreement with respect to all or any portion of the Licensed Property or Improvements referenced in Section 1 hereof by delivering written notice of termination to the Property Manager not later than sixty (60) days before the effective date of termination. Gables shall remove all Improvements, which the City has indicated in a written notice to Gables must be removed, from the terminated portion of the Licensed Property within the sixty (60) day notice period at its sole cost and expense.

b. Termination by City. The City may terminate this Agreement, if Gables fails to comply with the terms and conditions of this Agreement and the City is materially and adversely affected or may be materially or adversely affected and the material adverse default is not cured within sixty (60) days after receipt of such notice of default by Gables in which case Gables shall remove the Improvements, which the City has indicated in a written notice to Gables must be removed, from the terminated portion of the Licensed Property within sixty (60) days of the effective date of such termination; provided, however, if Gables (or a mortgagee on behalf of Gables) has commenced activities to cure any such default within the sixty (60) day period and is diligently prosecuting the cure, the sixty (60) day period will be extended for a reasonable amount of time to allow the cure to be accomplished and, in addition, if the default cannot be reasonably cured within such sixty (60) day period because of unforeseen conditions out of Gables' reasonable control, then the cure period will be extended by the further agreement of the parties for an additional reasonable amount of time to allow for the correction of the unforeseen condition and the cure of the event of default.

c. Abandonment. Any Improvements, which the City has indicated must be removed, not removed within the sixty (60) day time frame set forth in Subsections 8a and 8b above and not separately licensed, as described below in paragraph 8d, will be

deemed abandoned and, in the complete discretion of the City, may be subject to summary removal and disposal by the City with the reasonable, actual costs of any such removal and disposal to be paid by Gables within thirty (30) days of notice from the City of such costs.

d. Survival of Obligations. In the event of any such termination of this Agreement, Gables' obligation to reimburse the City will survive any such termination and, subject to the City's then applicable ordinances, rules and regulations, the City will have complete discretion regarding the continued use of the Licensed Property. In the event that the City incurs any costs as a result of the performance of any maintenance activities or removal and disposal of any of the Improvements that are the responsibility of Gables, Gables shall reimburse the City the cost of any such maintenance or removal and disposal and, in the event that Gables fails to make any such payment within thirty (30) days of receipt of an invoice for such costs, the City will have a lien for the amount of such costs against the adjacent property of Gables.

9. Omitted

10. Assignment. Gables shall not assign or transfer its interest in this Agreement without the prior written consent of the Property Manager, except to any entity that succeeds to all or any portion of Gables' rights in the Property. When such consent is required, such consent shall not be unreasonably withheld, subject to the assignee's compliance with the insurance requirements set forth herein, and the assignee's promise to comply with all covenants and obligations herein. To secure bona fide financing, which Gables may hereafter procure, Gables may, from time to time without the City's consent or joinder, encumber its rights under this Agreement and the lender protection provisions in Article X of the Master Agreement shall be applicable to such financings. Gables shall provide the Property Manager a copy of any proposed assignment or transfer of rights in this Agreement, which must include the name, address, and contact person of the assignee, along with the proposed date of assignment or transfer, whether the City's consent is required or not.

11. General Provisions.

a. Binding Effect. This Agreement binds and inures to the benefit of the parties and their respective successors and permitted assigns.

b. Complete Agreement. This Agreement contains the complete agreement of the parties with respect to the subject matter hereof and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement.

c. Executed Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

d. Choice of Laws. This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Travis County, Texas.

e. Legal Construction. If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Section headings in this Agreement are for reference only and are not intended to restrict or define the text of any Section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

f. Recitals. The recitals in this Agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

g. Notices. Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the following addresses. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

For the purposes of Notice, the addresses of the Parties will be as follows:



**GABLES:**

Lion Gables Realty Limited Partnership  
6850 Austin Center Boulevard, Suite 200  
Austin, Texas 78731  
Attn: Alexa Knight  
Telephone: (512) 502-6010  
Facsimile: (512) 502-6009

And

Lion Gables Realty Limited Partnership  
2925 Briarpark, Suite 1220  
Houston, Texas 77042  
Attn: Ben Pisklak  
Telephone: (713) 784-4144  
Facsimile: (713) 784-4650

With Copies to:

Steven C. Metcalfe  
Drenner Stuart Wolff  
Metcalfe von Kreisler, LLP  
301 Congress Avenue, Suite 1200  
Austin, Texas 78701  
Telephone: (512) 404-2209  
Facsimile: (512) 404-2244

**CITY OF AUSTIN:**

City of Austin  
Economic Growth and Redevelopment  
Services Office  
301 W. 2<sup>nd</sup> Street  
Austin, Texas 7870  
Attn: Sue Edwards, Director  
Telephone: (512) 974-7820  
Facsimile (512) 974-7825

And

City of Austin  
Economic Growth and Redevelopment  
Services Office  
301 W. 2<sup>nd</sup> Street  
Austin, Texas 7870  
Attn: Austan Librach, Assistant Director  
Telephone: (512) 974-2357  
Facsimile (512) 974-7825

With Copies to:

City of Austin Law Department  
301 W. 2<sup>nd</sup> Street  
Austin, Texas 7870  
Attn: Gordon Bowman,  
Assistant City Attorney  
Telephone: (512) 974-2346  
Facsimile (512) 974- 6490

h. Amendment. This Agreement may be amended, in whole or in part, only by the written agreement of the parties hereto or their successors or assigns. The applicable City department(s) must approve any modifications to the Improvements.

i. Memorandum of Agreement. The Parties or either party may prepare a Memorandum of Agreement, setting forth the rights and obligations of the Parties hereunder, and by agreement or after 30 days notice to the other party, the Parties or a party may file the Memorandum of Agreement in the Official Public Records of Travis, County, Texas.

**LION GABLES REALTY LIMITED  
PARTNERSHIP, a Delaware limited  
partnership**

By: Gables GP, Inc.  
a Texas corporation,  
its sole general partner

By: \_\_\_\_\_  
Ben Pisklak  
Vice- President

STATE OF TEXAS           §  
                                  §  
COUNTY OF TRAVIS    §

**THIS INSTRUMENT** was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Ben Pisklak, of Gables GP, Inc., a Texas corporation, general partner of Lion Gables Realty Limited Partnership, a Delaware limited partnership, of said corporation and partnership.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name of Notary  
My Commission Expires: \_\_\_\_\_

**Approved as to Form:**

**CITY OF AUSTIN**

\_\_\_\_\_  
Gordon R. Bowman  
Assistant City Attorney

By: \_\_\_\_\_  
Lauraine Rizer, Manager  
Real Estate Services Division  
Public Works Department

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on \_\_\_\_\_, 2005, by Lauraine Rizer, Manager of Real Estate Services Division, Public Works Department of the City of Austin, on behalf of the City of Austin.

\_\_\_\_\_  
Notary Public, State of Texas

EXHIBIT 'A'

2.582 ACRE  
LUMBERMEN'S INVESTMENT  
CORPORATION

FN 04-272(MM)  
JULY 30, 2004  
BPI JOB NO. 1159-01.92

DESCRIPTION

OF 2.582 ACRES OF LAND SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, OUT OF OUTLOT 11, DIVISION 2 OF THE ORIGINAL CITY OF AUSTIN, BEING A PORTION OF THAT CERTAIN 3.19 ACRE TRACT CONVEYED TO LUMBERMEN'S INVESTMENT CORPORATION BY DEED OF RECORD IN VOLUME 12038, PAGE 535 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 2.582 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron rod found at the southeasterly corner of that certain 1.94 acre tract being Lot A, Jetco Partners International Resubdivision One, a subdivision of record in Book 83, Page 184A of the Plat Records of Travis County, Texas, same being the southwesterly corner of said 3.19 acre tract, also being in the agreed upon Boundary line between Lumbermen's Investment Corporation and the City of Austin of record in Document No. 2001013549 of the Official Public Records of Travis County, Texas for the southwesterly corner hereof;

THENCE, leaving said Boundary Line Agreement of record, along the common line of said 3.19 acre tract and said Lot A, Jetco Partners International Resubdivision One, the following four (4) courses and distances:

- 1) N26°28'47"E, a distance of 222.40 feet to a 1/2 inch iron rod found;
- 2) N65°11'45"W, a distance of 53.96 feet to a 1/2 inch iron rod found;
- 3) N36°00'59"E, a distance of 153.54 feet to a 1/2 inch iron rod found;
- 4) N31°18'32"E, a distance of 22.34 feet to a 1/2 inch iron rod found, being the northeasterly corner of said Lot A, Jetco Partners International Resubdivision One, same being in the westerly line of Missouri Pacific Railroad Right-of Way;

THENCE, N31°37'22"E, a distance of 6.92 feet to a 1/2 inch iron rod found at the northwesterly corner of said 3.19 acre tract, being in the westerly line of the Missouri Pacific Railroad Right-of-Way (R.O.W. Varies) and the northwesterly corner hereof, being the point of curvature of a non-tangent curve to the right;

EXHIBIT 'A'

FN NO. 04-272 (MM)  
JULY 30, 2004  
PAGE 2 OF 2

THENCE, along said non-tangent curve to the right, along a portion of the northerly line of said 3.19 acre tract, being a portion of the westerly line of the Missouri Pacific Railroad Right-of-Way, having a radius of 520.00 feet, a central angle of  $57^{\circ}48'02''$ , an arc length of 524.58 feet and a chord which bears  $S25^{\circ}50'12''E$ , a distance of 502.62 feet to a PK nail set in concrete for the northeasterly corner hereof;

THENCE, leaving the westerly line of Missouri Pacific Railroad right-of-way, over and across said 3.19 acre tract the following two (2) courses and distances;

- 1)  $S20^{\circ}22'13''W$ , a distance of 45.27 feet to a cotton spindle set for the southeasterly corner hereof;
- 2)  $N74^{\circ}57'47''W$ , a distance of 321.98 feet to a calculated point in the southerly line of said 3.19 acre tract, same being the aforementioned Boundary Line Agreement of record;

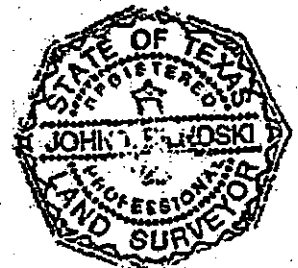
THENCE,  $N49^{\circ}56'23''W$ , along said Boundary Line Agreement of record, being the southerly line hereof, a distance of 62.77 feet to the POINT OF BEGINNING, containing an area of 2.582 acres (112,470 sq. ft.) of land, more or less, within these metes and bounds.

I, JOHN T. BILNOSKI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A LAND TITLE SURVEY WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

BURY & PARTNERS, INC.  
ENGINEERS-SURVEYORS  
3345 BEE CAVES ROAD, SUITE 200  
AUSTIN, TEXAS 78746

  
JOHN T. BILNOSKI  
NO. 4998  
STATE OF TEXAS

7/30/04  
DATE



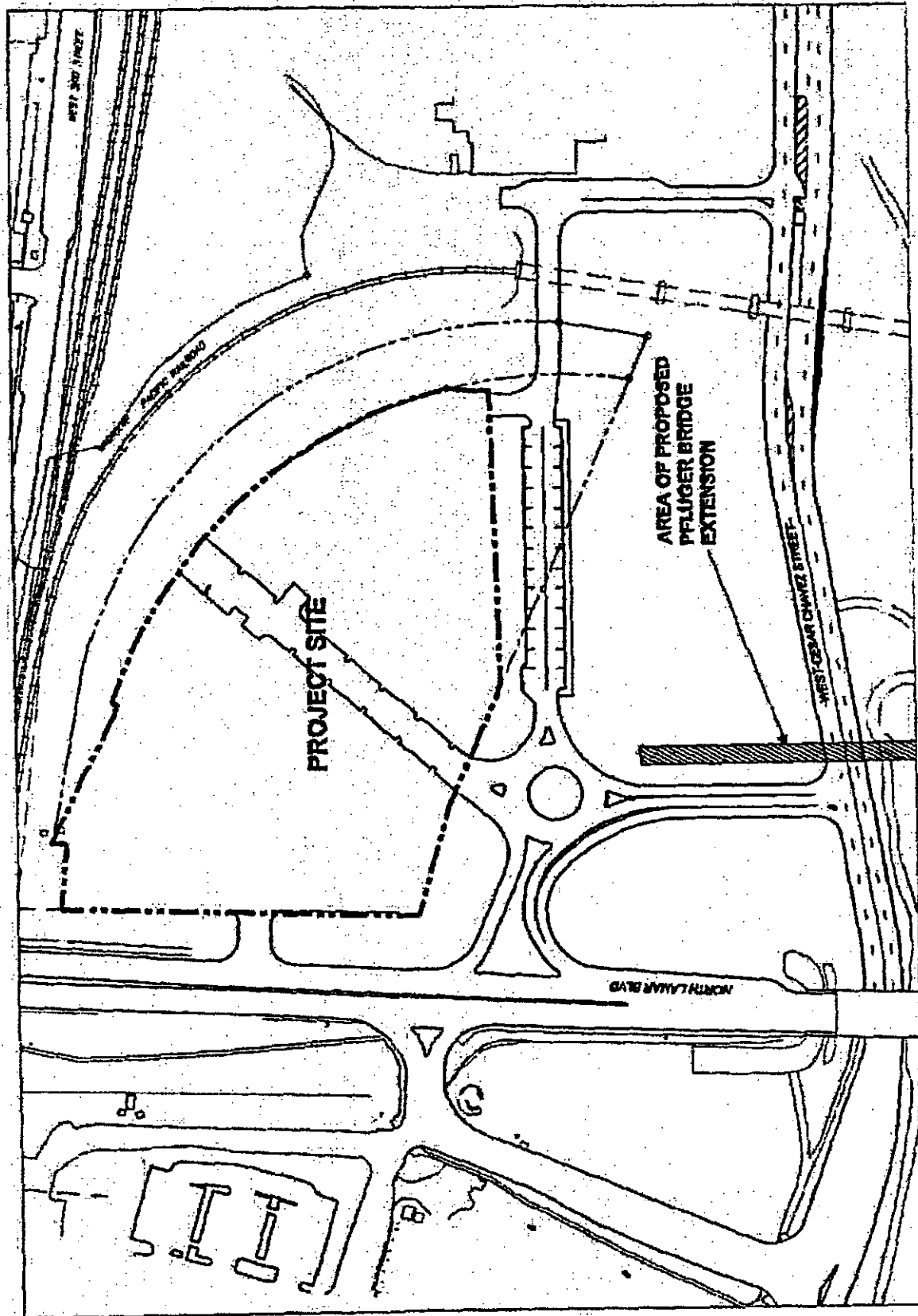


EXHIBIT B-1

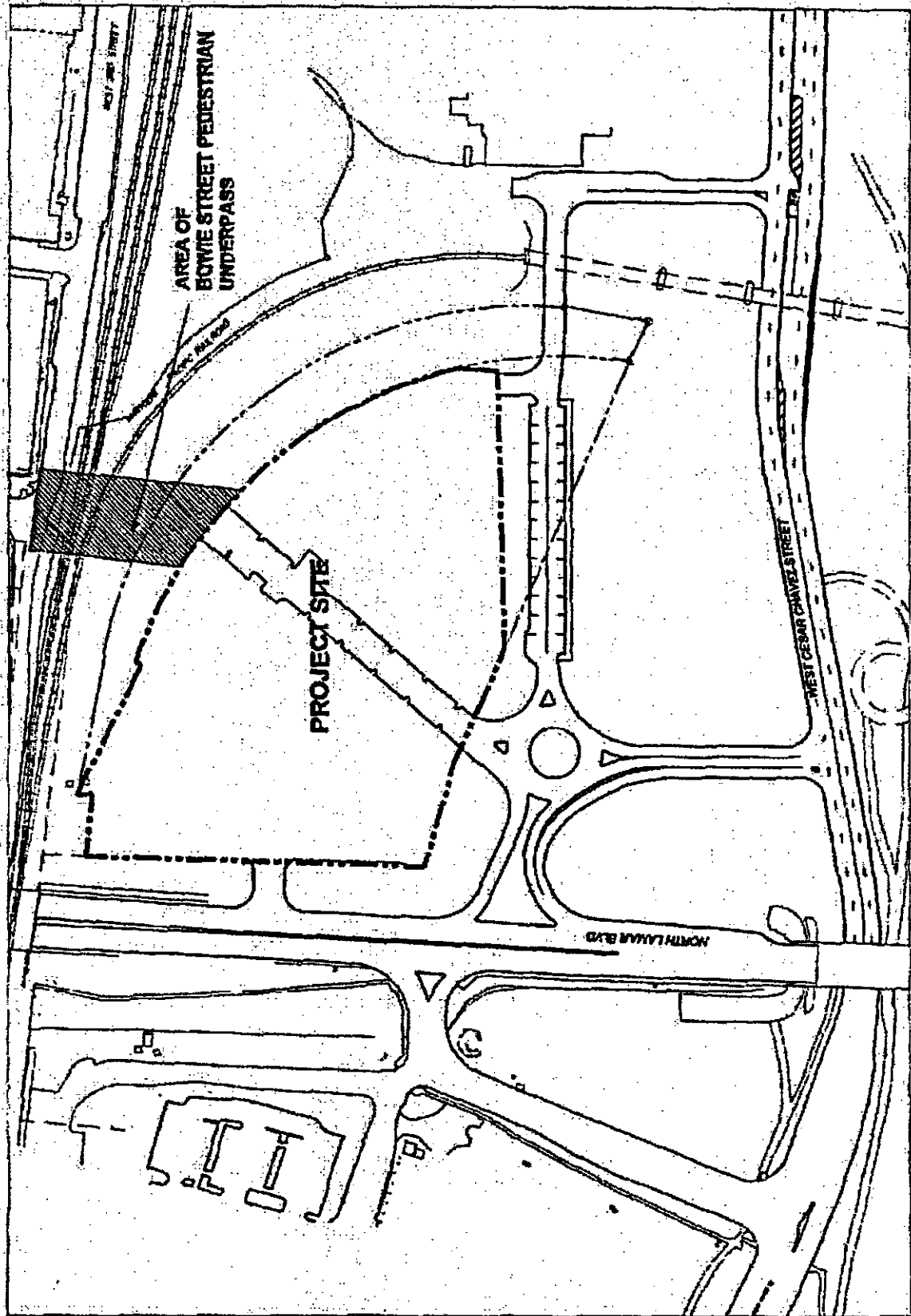
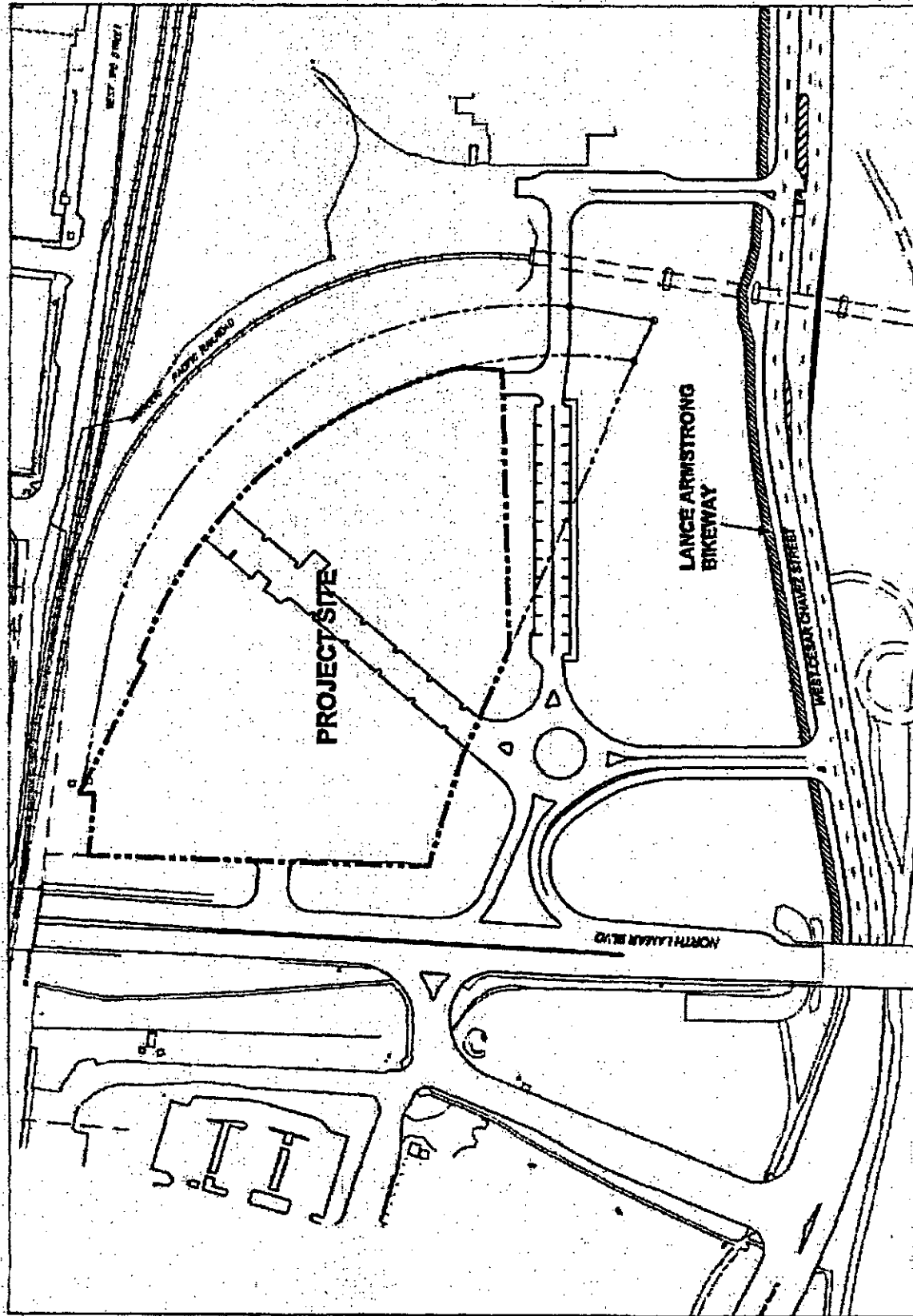


EXHIBIT B-2





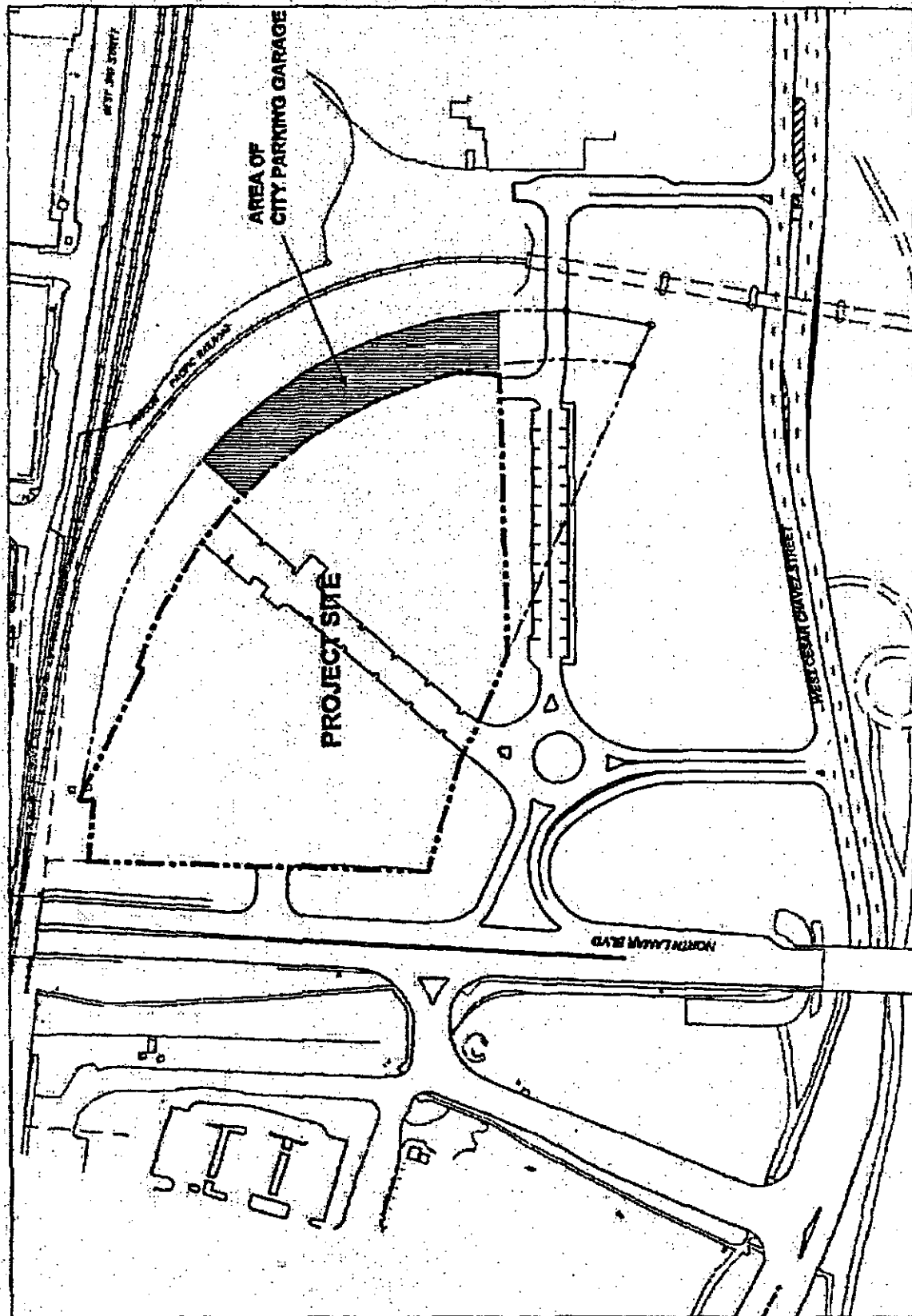


EXHIBIT B-4

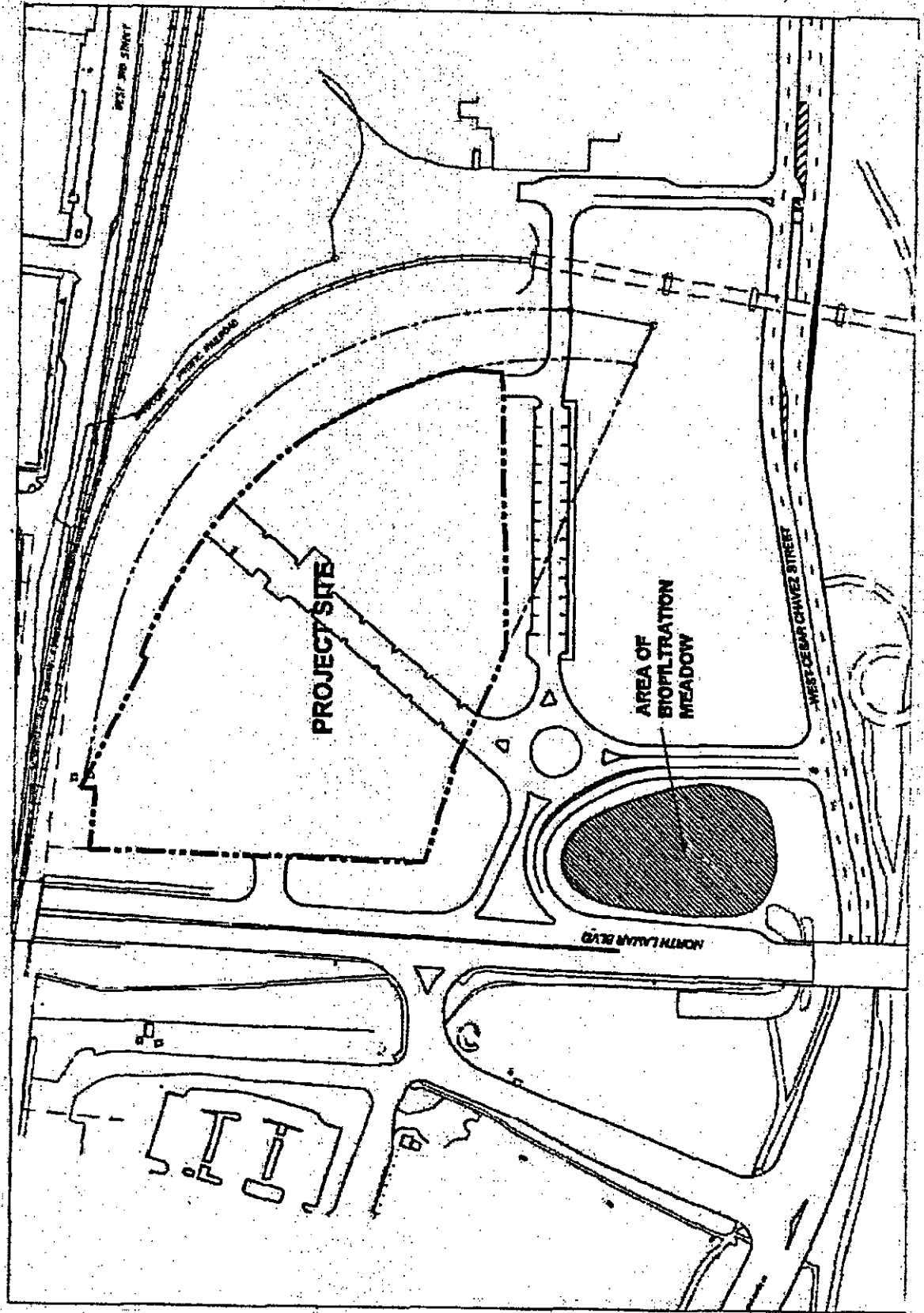


EXHIBIT B-5

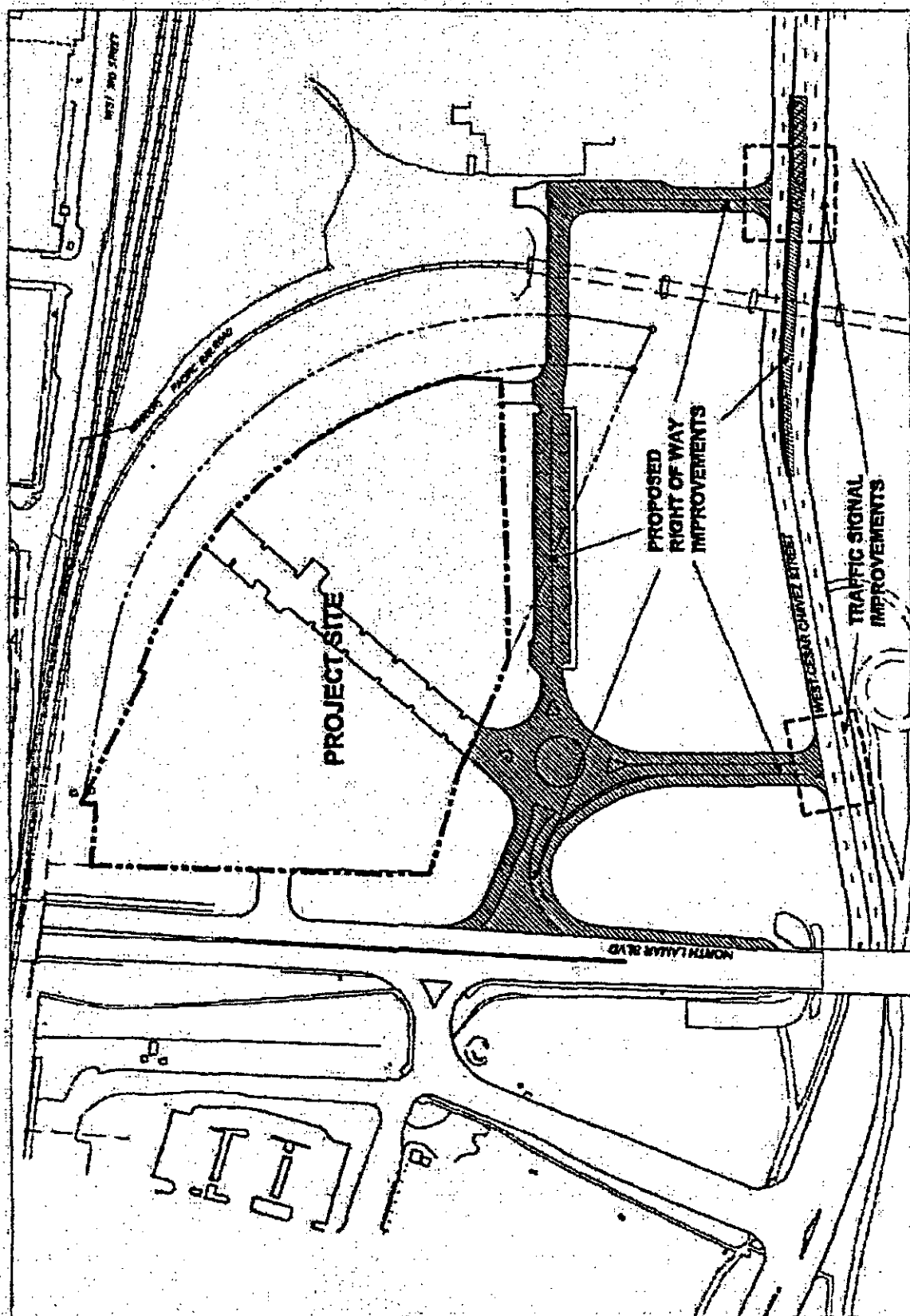
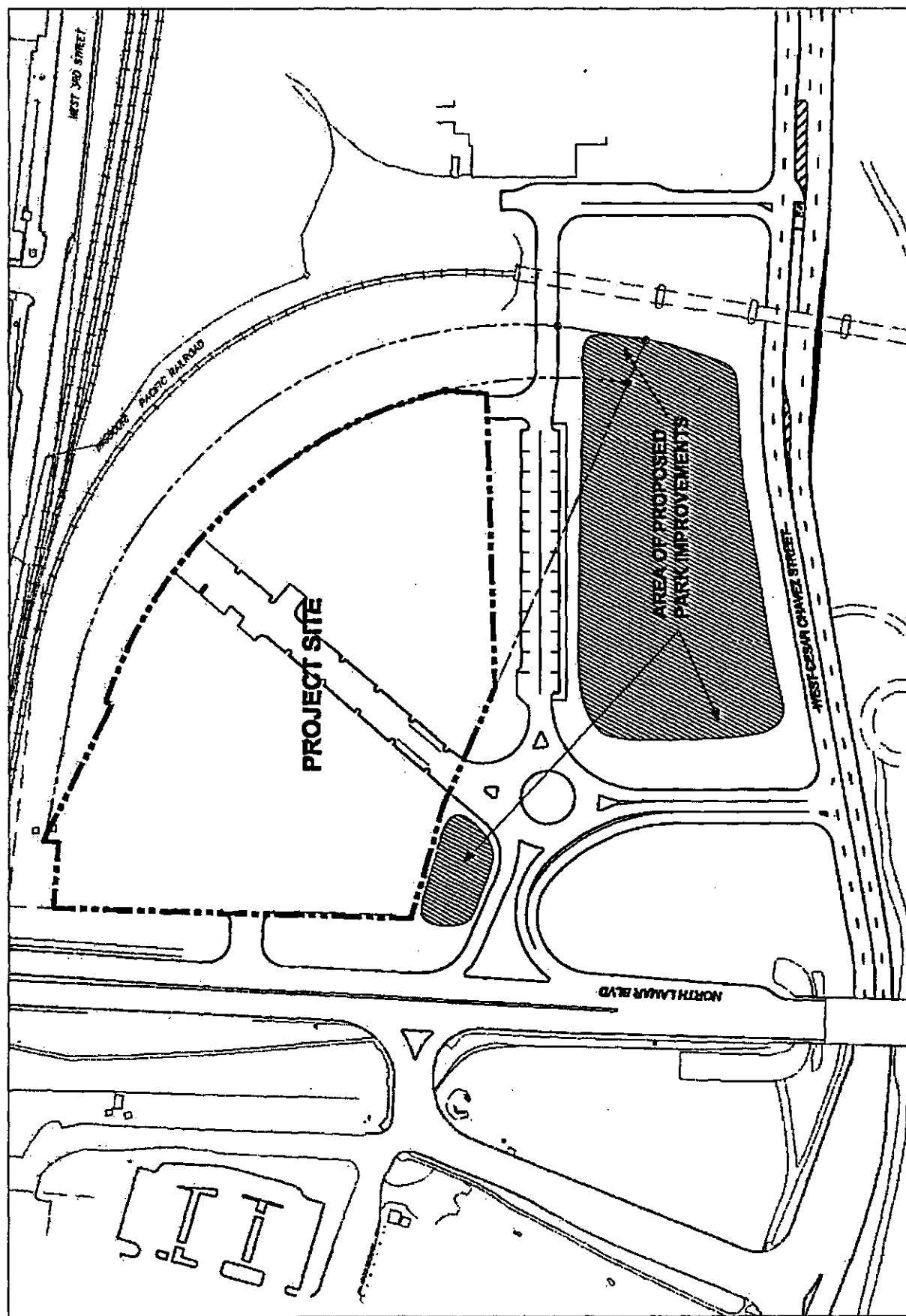


EXHIBIT B-6



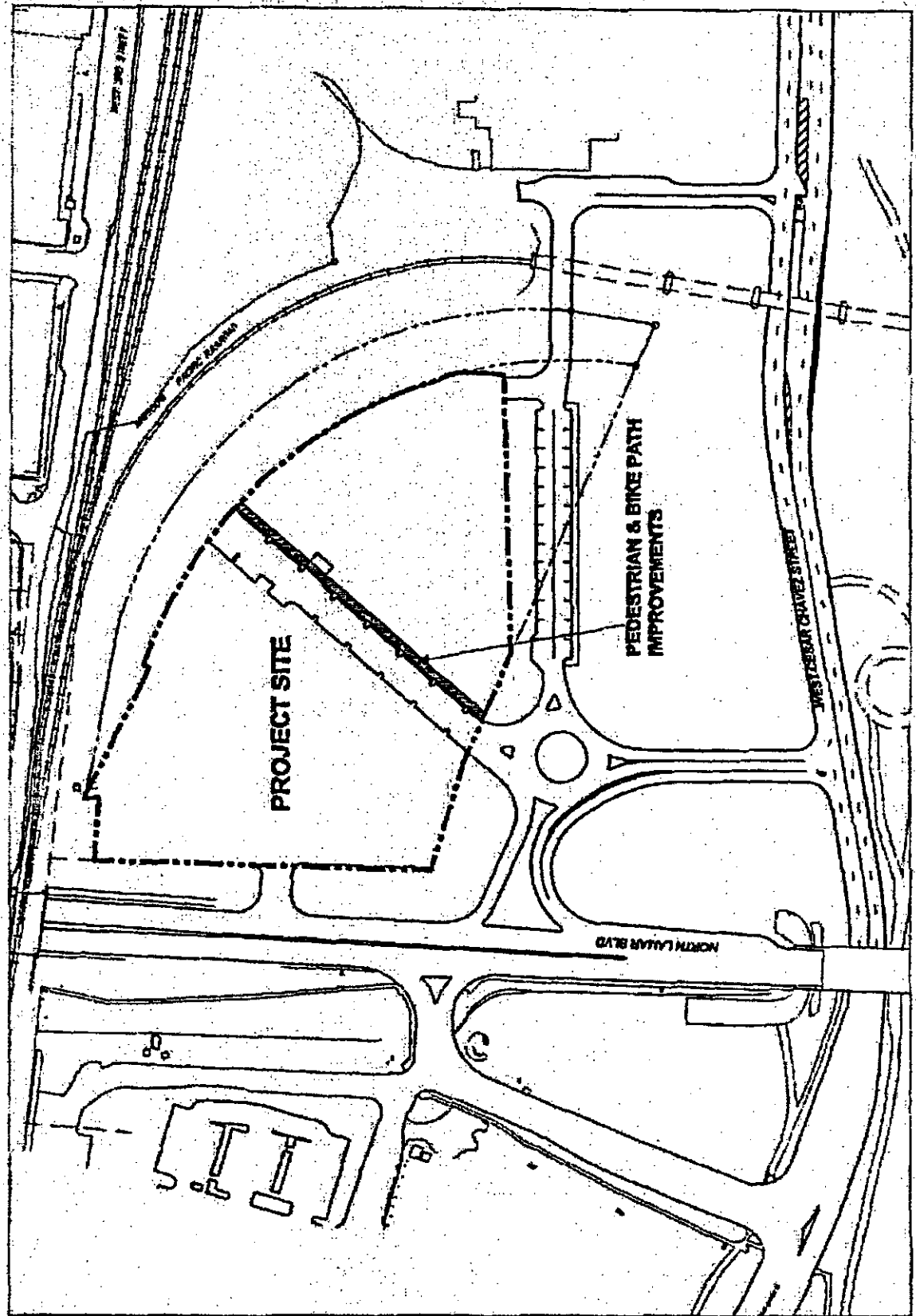


EXHIBIT B-8

## **EXHIBIT "C"**

### **RIGHT-OF-WAY IMPROVEMENTS**

The Right-of-Way Improvements referenced in Subsection 1a of the Agreement are more particularly described on:

The following sheets of the Site Development Permit Plans for File No. SP-  
\_\_\_\_\_:

(By way of example and without limiting the numbering or title of the applicable site plan sheets)

- Sheet 9 – Master Paving Plan
- Sheet 10 – Master Site Plan
- Sheet 11 – Site Plan A
- Sheet 12 – Site Plan B
- Sheet 13 – Site Plan C
- Sheet 14 – Site Plan DE
- Sheet 15 – Site Plan F
- Sheet 17 – Site Plan Details
- Sheet 27 – Paving & Drainage Notes & Details
- Sheet 28 – Paving & Drainage Notes & Details
- Sheet 53 – Overall Landscape Plan
- Sheet 54 – Landscape Plan
- Sheet 55 – Landscape Plan
- Sheet 56 – Landscape Plan
- Sheet 57 – Landscape Plan
- Sheet 58 – Landscape Calculations, Details & Notes
- Sheet 60 – Tree Preservation
- Sheet 61 – Paver Details

The following Sheets of the Construction Plans for Public Improvements for File No. SP-  
\_\_\_\_\_:

(By way of example and without limiting the numbering or title of the applicable site plan sheets)

- Sheet 8 – XXX Avenue Plan & Profile
- Sheet 9 – XXX Avenue Plan & Profile
- Sheet 10 – XXX Avenue Plan & Profile
- Sheet 11 – XX Street Plan & Profile
- Sheet 12 – XX Street Plan & Profile
- Sheet 13 – XX Street Plan & Profile

Sheet 14 – XX Street Plan & Profile  
Sheet 15 – XX Street Plan & Profile  
Sheet 16 – Street & Drainage Notes & Details  
Sheet 17 – Street & Drainage Details  
Sheet 42 – XX \_\_\_\_\_ Plan  
Sheet 44 – Roadway Signage Plan

**EXHIBIT "D"**

**PARK IMPROVEMENTS**

The Park Improvements referenced in Subsection 1b of the Agreement are more particularly described on the following Sheets of the Site Development Permit Plans for File No. SP- \_\_\_\_\_:

(By way of example and without limiting the numbering or title of the applicable site plan sheets)

Sheet 12 - Site Plan B  
Sheet 54 - Landscape Plan  
Sheet 56 - Landscape Plan  
Sheet 58 - Landscape Calculations, Details & Notes  
Sheet 60 - Tree Preservation

## **EXHIBIT "E"**

### **BIO-FILTRATION MEADOW IMPROVEMENTS**

The Bio-Filtration Meadow Improvements referenced in Subsection 1c of the Agreement are more particularly described on the following Sheets of the Site Development Permit Plans for File No. SP-\_\_\_\_\_:

(By way of example and without limiting the numbering or title of the applicable site plan sheets)

Sheet 24 – Bio-Filtration Meadow Plan

Sheet 25 – Outfall Plan

Sheets 56 & 57 – Landscape Plan

Sheet 58 – Landscape Calculations, Details & Notes



## **EXHIBIT "F"**

### **PEDESTRIAN PATH AND BIKE PATH IMPROVEMENTS**

The Pedestrian Path and Bike Path Improvements referenced in Subsection 1d of the Agreement are more particularly described on the following Sheets of the Site Development Permit Plans for File No. SP-\_\_\_\_\_:

(By way of example and without limiting the numbering or title of the applicable site plan sheets)

Sheet 24 – Pedestrian Path and Bike Path Plan  
Sheet 58 – Calculations, Details & Notes

ID	Task Name	Duration	Start	Finish	2006												2007												2008											
					Qua	1st Qua	2nd Qu	3rd Qua	4th Qua	1st Qua	2nd Qu	3rd Qua	4th Qua	1st Qua	2nd Qu	3rd	1st Qua	2nd Qu	3rd	1st Qua	2nd Qu	3rd																		
1	Pfuger Pedestrian Bridge	10 mons	Tue 5/1/07	Mon 2/4/08	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8		
2	Bowie Street Underpass	12 mons	Mon 10/1/07	Fri 6/29/08																																				
3	Lance Armstrong Bikeway	1 mon	Mon 5/7/07	Fri 6/1/07																																				
4																																								
5	Gables Onsite Construction - Multifamily (Phase I)	24 mons	Mon 7/3/06	Fri 5/2/08																																				
6	First Multifamily units available	1 day?	Fri 10/19/07	Fri 10/19/07																																				
7	Thirty inch Wastewater Line Relocation	3 mons	Mon 7/3/06	Fri 9/22/06																																				
8	Right-of-Way Improvements	8 mons	Mon 9/25/06	Fri 5/4/07																																				
9	Biofiltration Meadow	11 mons	Mon 7/3/06	Fri 5/4/07																																				
10	Pedestrian Path & Bike Path	1 mon	Mon 7/2/07	Fri 7/27/07																																				
11	Park Improvements	2 mons	Wed 1/2/08	Tue 2/26/08																																				
12	City Parking Garage	8 mons	Mon 2/4/08	Fri 7/18/08																																				

Project: GPP Schedule\_11.30.05  
Date: Wed 11/30/05

Task

Split

Progress

Milestone

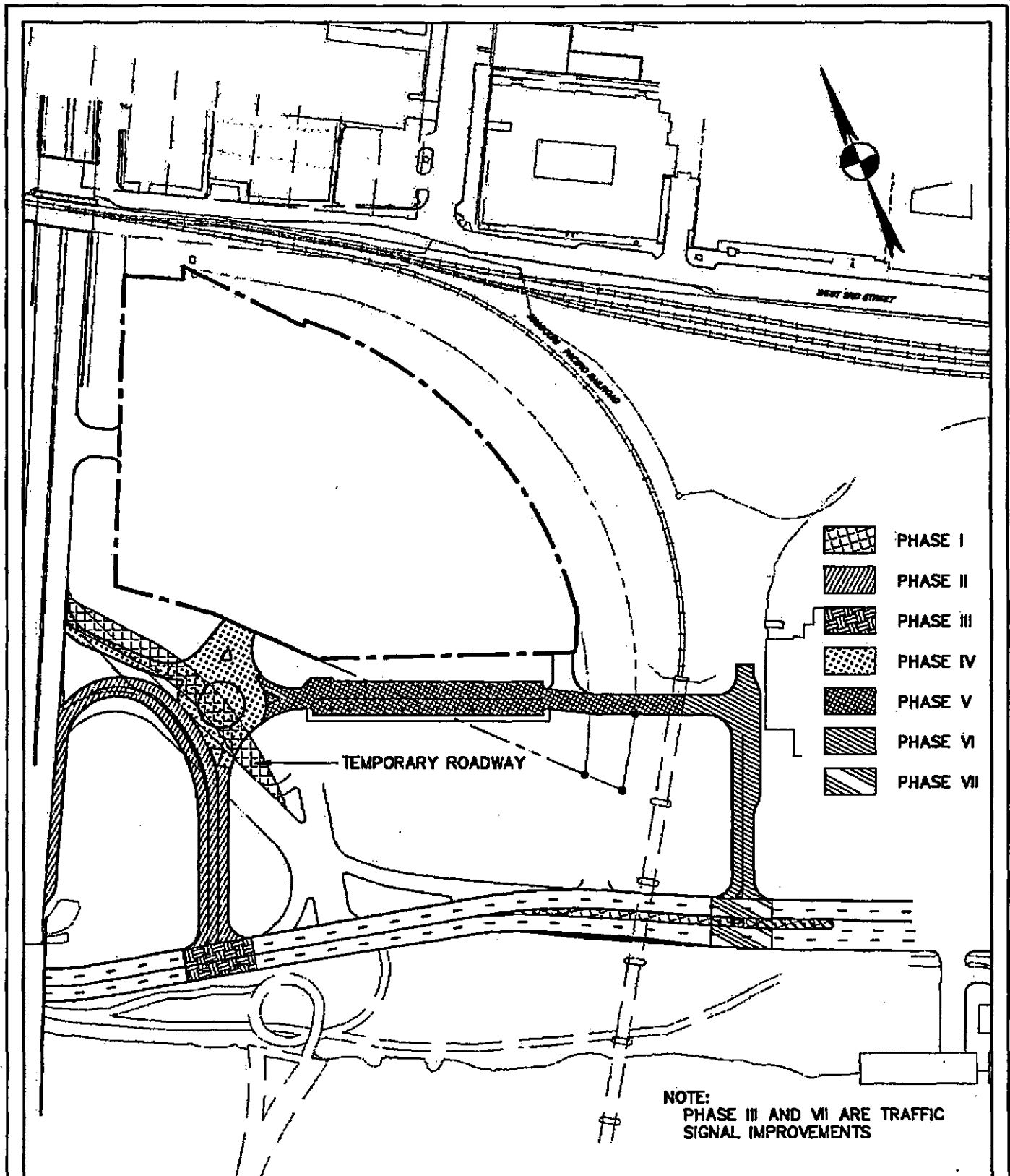
Summary

Project Summary

External Tasks

External Milestone

Deadline



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## RIGHT-OF-WAY IMPROVEMENTS

CITY OF AUSTIN

EXHIBIT P

DATE: 11/08/05

SCALE: N.T.S.

DRAWN BY: DAZ

FILE: G:\659\23\EXH\65923EXH107.DWG

PROJECT No.: 659-23.00